

MINUTES

PLANNING COMMITTEE

November 13, 2013

A meeting of the Planning Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by JoAnn A. Yukimura, Vice Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Wednesday, November 13, 2013, at 9:36 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Gary L. Hooser, Ex-Officio Member
Honorable Jay Furfaro, Ex-Officio Member

Excused: Honorable Ross Kagawa

PUBLIC COMMENT:

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

There being no objections the rules were suspended to take public comment.

DAN KONGER: Good morning. My name is Dan Konger. I work with Unlimited Construction and I am here to talk about the Inik'i Ordinance.

Mr. Furfaro: Inik'i Ordinance, okay.

Mr. Konger: Yes.

Mr. Furfaro: Thank you for repeating that.

Mr. Konger: We have been working with the Coco Palms Hui currently who is attempting to renovate the Coco Palms and this morning I understand you are going to hear possibly extending or voting on the Ordinance and so I was just here to suggest that I think that extending the Ordinance would be beneficial to the community as far as getting the Coco Palms renovated. It is kind of short order this morning so I did not have a lot to say but I think it will be beneficial

to the construction community also to the beach communities right there where the Coco Palms serves and also to the longevity of that which it would promote. Thank you.

WALTON HONG: Thank you Mr. Chair and members of the Council. I am speaking on Bill No. 2461. I apologize I noticed a typographical error in my heading on my letter but I do have copies of written testimony.

Mr. Furfaro: Scott, would you take that testimony, please.

Mr. Hong: Thank you. If I may have indulgence with Chair to read this letter into the record. It is addressed to the Planning Committee. I am submitting this testimony as a private citizen, and not as an attorney for any person or entity. I apologize for the tardiness of this submittal, but only recently learned of the bill and the Planning Committee meeting. Please consider this letter as testimony in opposition to Bill 2461, relating to establishing shoreline setbacks in the County of Kaua'i. While it is difficult to argue about preserving and maintaining the shorelines of Kaua'i for future use by the general public, I believe that Bill 2461 contains some provisions that will greatly and unnecessarily affect hundreds of long-term as well as recent property owners, most of whom are probably not aware of the implications of this bill. The bill purports to regulate construction and landscaping without regard to the surrounding or immediate adjacent parcels. Application of the requirements under Bill 2461 would treat lots in many circumstances in a negative manner without preserving any beach or access. While the Council has the right to take reasonable actions for public benefit, the Council is not allowed to act arbitrarily or in any manner that unfairly discriminates against particular owners or classes. Under Bill 2461, the shoreline setback will increase, where in some cases an entire lot would be within the newly defined shoreline setback area. The bill, however, permits the landowner to obtain a variance to build within the shoreline setback. But to even apply for the variance, the landowner would need to incur substantial effort and expense, including obtaining an environmental impact assessment or an environmental impact statement. And the end result would probably be permission to build on his lot, which would have been permissible under the existing law. What has been accomplished, other than to discourage or stop construction and/or landscaping? I submit very little. Other specific concerns are as follows. The range of applicability. The provisions in Bill 2461 will become applicable to all lots within the County on which a structure and/or landscaping is to be proposed within five hundred (500) feet of the shoreline, unless certain conditions are met. These conditions are a finding by the Planning Director that the proposed structure and/or landscaping will not adversely affect the beach processes. But it also requires that a licensed surveyor confirm that the proposed structure or use landscaping is outside the coastal erosion hazard zone and will be located at a distance of no less than one hundred (100) feet plus one hundred (100) times the annual coastal erosion rate.

Mr. Furfaro: Walton, your three (3) minutes are up for this period.

Mr. Hong: Okay.

Mr. Furfaro: If you could summarize I will give you another forty (40) seconds.

Mr. Hong: Thank you. Well basically the bill I believe is too ownerist. A five hundred (500) feet would include a lot of loss that were not intended. For just one simple example, I have a client who has an average lot dept is one hundred and fifty-seven (157) feet but the shoreline setback under the new bill is one hundred and sixty-five (165) feet. It does not apply. It does not work. I think the existing current legislation works. It does protect the shoreline. It does protect against adverse beach processes and I ask that you consider the testimony in taking consideration when you deliberate on this matter. Thank you.

Mr. Furfaro: Thank you very much. Thank you for the written testimony we will so enter it into the record.

Mr. Hong: Thank you.

Ms. Kosen: My name is Jill Kosen and I own Wedding In Paradise here in Līhu'e. I am working on the Inik'i Ordinance with the group that is going with the Coco Palms. We are working together in the growth and industry in the wedding aspect of what Coco Palms already has had. Over the last 20 years I have worked with Larry and Coco Palms at various times and the reach the Coco Palms has in aura, love, and that whole persona has always reached everybody from Europe to the U.S. as to what romantically it is so perfect over there in that area. So I just wanted to support and be there for the fact that the industry, itself, Coco Palms reopening will be just a wonderful event. Thank You.

There being no objections, the Committee recessed at 9:36 a.m.

The Committee reconvened at 11:36 a.m., and proceeded as follows:

Minutes of the October 16, 2013 Planning Committee Meeting.

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Rapozo, and carried by a vote of 3:0:1 (Councilmember Kagawa was excused), the Minutes of the October 16, 2013 Planning Committee Meeting was approved.

The Committee proceeded on its agenda items, as follows:

C 2013-271 Communication (07/16/2013) from Ian K. Jung, Deputy County Attorney, recommending Council approval of a Grant of Pedestrian and Parking Easements relating to Kahuaina Plantation Subdivision (S-2007-02) and Kahuaina Plantation Subdivision Phase II Subdivision (S-2009-15):

- Grant Of Pedestrian And Parking Easements; concerning real property identified as Lot 15-A (TMK (4) 5-1-003:006), Lot 15-D (TMK (4) 5-1-003:032) and Lot 15-K (TMK (4) 5-1-003:039).

(Deferred 10/02/2013)

Vice Chair Yukimura: Thank you. Is there anyone who wish to speak on this item? I will suspend the rules for public testimony.

There being no objections, the rules were suspended.

PETER WALDAU: Peter Waldau for the record. Thank you. I just have a couple of quick comments about this agenda item. One, I wanted to point out that there was a concern about the legality of locating the pedestrian easement over the State *ala loa* prior to location of the State *ala loa*. The issue being that if the State is claiming the *ala loa* coastal trail in fee simple that Falko cannot grant on land claimed by the State because it is not theirs to grant. So the idea was to get the location of the State *ala loa* determined first. Subsequently, it was actually on the date of the last time that County Council addressed this item on October 2nd that the Department of Land and Natural Resources (DLNR) did issue a letter indicating that as a result of inquiry DLNR will meet with the developer to discuss a lateral public access corridor across this development. We hope that common ground will prevail to ensure an equitable resolution. Now this was Roger Imoto, Hawai'i Branch Manager of the Division of Forestry and Wildlife and signed by Nelson Aires on his behalf. Nelson Aires being the Head of the Na Ala Hele State trails office. As you know there was a stipulation for an *ala loa* across this development that in court was an item that you had presented to you previously. There was a meeting last week of the Na Ala Hele Kaua'i Advisory Council, where Nelson Aires was present. There was a concern of lack of State funds to do the survey at Kahuaina. There was a request to come up with a dollar amount that might enable community funds to cover that survey. The only other quick wrap up I want to do on that is that at Moloa'a Bay Ranch which was kind of a neighboring property that the memorandum of agreement was that the grantor paid for the survey in that case. The other piece of information that I wanted to throw out is that when you consider this grant of pedestrian easement and parking that at Moloa'a Bay Ranch the grantee was required and responsible for maintaining the easement in a sanitary and orderly manner in the case of storms and removing fallen trees. But it was the grantor's responsibility to maintain a two (2) foot wide

tread way and beyond that on either side two (2) feet of any branches or shrubs that might be encroaching. So think about this when you think about the limitations of our County resources for maintaining this grant of pedestrian easement. I did go to the Planning Department desk and spoke with an agent, Wesley. My question to him was do we have a map yet where this parking is going? You know it is pedestrian access.

LORI L. MARUGAME, Counsel Service Assistant: Three (3) minutes.

Ms. Yukimura: Your three (3) minutes are up...

Mr. Waldau: Wesley went to the back room, spoke to his boss, came back and said until we get a location of the trail, that is first. That needs to happen first before we can have any discussion about where the parking is going to be. So I am just trying to give you a sense that there is a process going on and thank you for an opportunity to give my comments to Council. Thank you.

Ms. Yukimura: Thank you, Mr. Waldau. Any questions? I have a question. What is the date of the letter that you read?

Mr. Waldau: It is October 2nd and that was the last....

Ms. Yukimura: Of 2013?

Mr. Waldau: October 2, 2013 and I do apologize that I only have four (4) copies of that letter.

Ms. Yukimura: One (1) copy would be fine. So it is October 11, 2013?

Mr. Furfaro: October 2nd.

Ms. Yukimura: October 2nd, I am sorry. Okay thank you very much. Is there anyone else who wishes to testify?

Ms. Marugame: We have another registered speaker, Richard Spacer.

Ms. Yukimura: Thank you.

RICHARD SPACER: Thank you, Chair and Committee members. Richard Spacer again for the record. My presents here today is more to ask you members of what we have accomplished since our last four (4) opportunities that we have been together discussing Kahuaina here at County Council? You have heard

our testimony asking for a field trip and asking for the State to locate the *ala loa*. Others have testified about the conditions of the easement trail fencing, and things like that. As you know from my testimony, I am very interested in the location of this historic trail and how it intersects the proposed pedestrian easement. I am looking for and the community is looking for where we are at with our progress today since July. Do we have any commitments to you from the State? We have heard what they have written to Na Ala Hele but have you folks made any inquiries as to getting this *ala loa* surveyed? Peter Waldau's testimony brings up an opportunity to assist the State if Nelson Aires and Mr. Imoto are saying the money is a problem. I think we have talked about at other meetings that possibly we could meet them half way on something like that. But then it has also been mentioned the grantor, in this case the landowner would bare the cost of that. I wanted to bring up a point since I was not myself at the last meeting in October but I saw the video of the meeting with Janice Lombardi saying that the *ala loa* is a false issue here at minute forty-nine (49) of the video and I know that Councilmember Bynum and all of the rest of you certainly do not share that view that the *ala loa* is very much an issue and we are way past the point of trying to decide if there is an Ala Loa here and things of this nature but it is what to do with it and how to allow the public to enjoy that trail and the *mauka/makai* trail if and when that should also be approved. So that is really all I had to say today. I think I have covered all the other bases at other meetings.

Ms. Yukimura: Thank you Mr. Spacer. Any questions? If not, when we come to discussion we will be explaining some of the things we have learned or intend to do.

Mr. Spacer: Thank you very much.

There being no objections, the meeting was called back to order, and proceeded as follows:

Ms. Yukimura: Thank you. Is there anyone else who wished to testify on this matter? If not, we will come back into Committee and Chair would like to say that Councilmember Hooser and I did do a site visit. I do not know if other members got to do one too in the interim between the last meeting and this one. The landowner's representatives were here earlier this morning. I am sorry that they left but I have spoken to them and we were intending to defer this matter for several meetings to allow for some performance of the landowner but because they are not here, I am going to recommend to defer for just two (2) weeks to our next Committee Meeting at which time they have said they will be here to speak clearly about what they intend to do in terms of facilitating some resolution to this issue of access. Before we get a motion to defer, I want to give Committee members and non Committee members time to discuss any concerns or intentions.

Mr. Rapozo: I have questions for the Planning Director and the County Attorney probably. Can we get them to come up?

Ms. Yukimura: Okay, we can certainly do that. Mr. Jung and Mr. Dahilig. I will suspend the rules again.

There being no objections, the rules were suspended

Mr. Rapozo: I will definitely support the deferral. I think the October 2nd letter from DLNR says that they are looking into the route and its relationship to the *ala loa*, so that is a good thing. I support the two (2) week deferral to get the landowner's representative here but I definitely hope this Council hold off in any action until we get back from DLNR and their position on the *ala loa*. I have a couple of questions and it is pertaining to the Transportation Plan. I know we sent a couple of request over Mike and we still have not had a response. It was due on the eighth (8th) and it may be in transit but I am just concerned regarding the traffic and this is related to the letter we received from the Department of Transportation on September 27, 2013 from Mr. McCormick. This is a direct response to the community that had responded. In fact, the community had sent an inquiry over to the Department of Transportation regarding the traffic plan because the big change in the number of units this development will have and the State has responded that, let me just read it. It says, "has the Department of Transportation conducted an analysis on the subdivision's potential impact on traffic?" "No, the Department has not conducted an analysis of the impacts of this subdivision." This is our questions asking the State. "If not, is it advisable or necessary to have an analysis conducted and have the subdivision conditions amended in accordance with the analysis?" His response was, "yes, as noted on our December 3rd letter. The Hawai'i Department of Transportation will require an updated Traffic Impact Analysis Report (TIAR) once the final determination is made as to the size and density of the project. If the plans for this subdivision have finally been completed to the point we can determine the size and density of the proposed subdivisions at the full build out then we will be requiring a new TIAR that analyses the full build out conditions." That was the State's response. What does that do for the County?

MICHAEL A. DAHILIG, Director of Planning: Just to circle back to the information request I believe that I am aware something came over and let me just double check on where that response is. I will make sure that it gets to you and my apologies that if it did not get to you by the eighth (8th). In terms of the actual conditions of subdivision, there are two (2) subdivision approvals that have to be read together with respect to the Department of Transportation (DOT) comments and they are actually, we do have record from DOT back in '05 and '06 when the approvals were going though about conditions of approval that were attached to the first and the second subdivisions. As far as from a cursory standpoint how the

conditions of approval operate, if they hit the maximum density which is eighty (80), as we understand, it does trigger a new TIAR. Anything less than that I believe there are certain trigger points by which more studies are needed and we can outline that. I need the actual conditions in front me to outline it for you but if they do hit that maximum threshold that is correct in terms of what you are reading Councilmember Rapozo. They would have to go back to DOT and trigger another TIAR. So at this point there is not an actual build out plan that has been submitted to the Department. Right now, we just have a Planning permit at this point and so it really becomes incumbent on once they submit the sheets for actual construction how we would apply the conditions and response subsequently and there is a trigger point for that new TIAR.

Mr. Rapozo:

So nothing happens until they...

Mr. Dahilig:

Yes. Nothing will happen until they actually build out the project because all that sits is just a subdivision approval. There are no zoning approvals at this point and the density potential is there but because they have not actually come in for a specific use of the property through a zoning permit it is difficult for me to say that certainly a TIRA will be required but it may be required if they come in for approvals for full build out of the property.

Mr. Rapozo:

Okay and the 2006 permit or the permit that you referenced, the State Department of Transportation did set forth three (3) requirements. But they also said that they shall set highway improvement plans to the State for review and approval and I am not sure when that gets done. I do not know. When does that happen?

Mr. Dahilig:

That usually will happen when they come in for the zoning permits. I presume the way we would handle it is check with DOT to see if the use of the property as they show through zoning application is larger than what they anticipated their comments to be presumed upon and that point, the additional TIAR and analysis would flow from there.

Mr. Rapozo:

Okay. Then the permit of 2006 also stated, I mean this was number 1A where the Planning Department, and obviously before you but requirements of the Planning Department the applicant is advised the uses of the newly created law shall be limited to those listed as permissible uses within the Agricultural district. Dwellings on the lot shall mean a single family dwelling located on and used in connection with the farm where agricultural activity provides income to the family occupying the dwells. Is that still in effect?

Mr. Dahilig:

It is in black and white so we apply it.

Mr. Rapozo: Well I know it is in black and white but are we going to enforce this because as I read the ads, I do not see that on any of the solicitation that the owners are going to have to live in the house and then they are going to have to derive their income from farming activities on the property. That is not on here and I am just curious how do we enforce that? I mean I do not think that farmers are going to line up to buy these lots because all of the selling points have nothing to do with farming but yet that is number 1A on the permit that you referenced 2006. So how do we enforce that?

Mr. Dahilig: At this point there is no use on the property so I would have to talk hypothetically in terms of how we would enforce it and certainly it would come as a complaint into our Department where we would have to ascertain whether or not the use of the property as physically conducted at the time is in accordance with that particular proviso. Certainly the advertisements may not reflect what that condition is but as our ability to enforce is tied to actual use on the property I can only talk presumably until they actually start construction.

Ms. Yukimura: Excuse me, excuse me. We are veering off the agenda item which is the public access document, the deed. We could schedule and post another item to look at the subdivision itself. But I want to remind Committee members that the subject is the public access deed.

Mr. Rapozo: I understand Councilmember and I agree to some extent but yet the project requires many different approvals, little approvals all over the place. They are asking for approval for a legal document for a part of this project and I am not comfortable approving anything if this project is not going to be true to what the permit says in all facets. You are right, we need a separate agenda item but I want to make sure that it is what it is or what it is portrayed it to be.

Ms. Yukimura: I mean we can even post it at the next Committee meeting for two (2) different subjects.

Mr. Rapozo: I will be honest with you the reason I am asking these questions is because as a response to I guess my comments on the floor the last time with the *ala loa* which is a direct relation to what is on the agenda. I receive a lot of E-mails and phone calls from basically, telling me do not allow more cars to come down. Do not make it so we can have more visitors down here. Basically saying we want to keep the access to the residence.

Ms. Yukimura: And that is an important part of public access.

Mr. Rapozo: Correct and my point is I do not know if we would have that much opposition if it were farmers that would be buying these properties. We just talked about farming but anyway I agree we can have a separate posting. And he referenced the 2006 permit, which I have here, and that stuck out. Are we going to really, truly, is it this County's, really is our desire to enforce this? Whether it is Transportation, or whether it is public access right-of-way?

Ms. Yukimura: Well if it is about enforcement of all provisions or conditions of the subdivision ordinance, we really need to repost another agenda item.

Mr. Rapozo: That is fine. We can do that.

Ms. Yukimura: Thank you. Chair, did you have a question?

Mr. Furfaro: Yes, I do. As a non Committee member and if you indicate to me that this has be a new posting I understand. Mike, in the correspondence that we cannot seem to find from you last responses, did you address the questions I asked in the Committee as a non Committee member that how did we get a subdivision survey that did not accurately expose us to the proposed density was. As a past Planning Commissioner, I do know that the cut line from the highway is about seventy-five (75) cars or so but we are approving the subdivision piece here but we do not actually know what that density would be and did you answer that question in your response?

Mr. Dahilig: In terms to the response to Councilmember Rapozo, that particular response on the density, I did not address. But just to answer your question Council Chair, the calculation of the density involves essentially three (3) cuts. That it is not as cut and dry as reading one subdivision approval alone.

Ms. Yukimura: So can we do this, can we post for next time and we will send questions over before that?

Mr. Furfaro: Can I just share a closing document? I hope you are not telling me that because I am not a Committee member that you did not address my question.

Mr. Dahilig: No sir.

Mr. Furfaro: Because I do more than just work here. I think I am also a officer of the County.

Mr. Dahilig: I understand sir.

Mr. Furfaro: Okay, I will wait for the next response.

Ms. Yukimura: So staff let us post a second agenda item on our next Committee meeting for review of the subdivision and also have questions sent beforehand to Planning so we can have some answers back by our Committee date or prior to that.

Mr. Furfaro: Committee Chair, my question is only focused on the highway and that determinations.

Ms. Yukimura: And the traffic that is generated. I think there is a lot concern about that. You have a question is that the same thing?

Mr. Hooser: I appreciate the discretion that you have offered to Councilmember Rapozo and the Chair. I would ask for just a little bit also. We will post it on another item and have a extensive discussion, but I share many of the concerns that Councilmember Rapozo has. Does the County Planning Department consider the restrictive covenant when deciding whether to grant the subdivision or not? It is my understanding that the restrictive covenant actually would limit farming activities or inhibit, I should say, farming activities and I think that is in violation of State law.

Mr. Dahilig: That is a good question. Usually when we look, when a subdivision approval does come down and there is a Covenants, Conditions, and Restrictions (CC&R) situation. There are elements in the subdivision as well as the zoning approvals that will set forth certain conditions as part of the CC&R but the actual CC&R documents that are recorded and are attached to the property are usually never reviewed or approved by our department subsequent to it.

Mr. Hooser: Do you have copies of them and I will move on? Do you have copies of those?

Mr. Dahilig: I am not aware of us having any copies off hand of the CC&R for these particular subdivisions approvals but I can certainly relay back to my staff and see if we can get it for you.

Mr. Hooser: Okay. Thank you.

Ms. Yukimura: Thank you.

Mr. Furfaro: I have one (1) more question.

Ms. Yukimura:

Alright, Chair.

Mr. Furfaro: This is also for the attorney. So remember we do have some history on that with Aliomanu and the protective CC&R that were included in that subdivision that indicated that they prohibited some agricultural activity. So just so you know we have some legal history with that and I caution you. Thank you, Committee Chair.

Ms. Yukimura: Thank you. I do believe that another separate item on all these different issues that are coming up traffic, restrictive covenant against farming etc. would be useful discussion as a precursor to our Important Agricultural Lands (IAL) discussions and what is happening with our Ag lands. So we will post that as a beginning discussion. I also want to note that Ben Farris that is a lifelong farmer, that sent us home from our field trip with beautiful organic ginger is farming on the land and he was here today to testify so we may hear some of that in terms of farming that are going on there. So anymore questions of Ian or Mike regarding the public access document?

Mr. Hooser:

If I could?

Ms. Yukimura:

Yes certainly.

Mr. Hooser: And you may have addressed this in the past but Councilmember Yukimura and I went up and inspected the easement. Did anyone from the Planning Department inspect the easement prior to signing off that it was a good easement?

Mr. Dahilig: I think Councilmember, my response the last time, was I did not know but after following up it was in fact that no one from my department did go out there and inspect.

Mr. Hooser:

Okay, thank you.

Mr. Rapozo:

You said nobody went?

Mr. Dahilig:

Nobody.

Mr. Hooser: I think the discussion we are going to have will accentuate the importance of physically looking it before we accept it so thank you.

Ms. Yukimura: Any other questions regarding the public access issue and the deed that is before us?

Mr. Furfaro: In fact I do want to say something, one more thing.

Ms. Yukimura: Yes? Chair.

Mr. Furfaro: So Mike is someone from you department going there because if I followed the proposed easement it goes so far and then it becomes a *pali*.

Mr. Dahilig: And I think this particular (Inaudible) did really highlight the necessity for us that when we do these types of lines that we do need to send someone out. So from a protocol standpoint we are making that adjustment accordingly.

Mr. Furfaro: So our answer is, yes?

Mr. Dahilig: Yes.

Mr. Furfaro: Thank you.

Ms. Yukimura: I am glad to hear that as one who worked on correcting the Kaupea access with cooperation from the owner by the way. I thought that after that correction we for sure would go out and inspect and I am glad at least it is now happening. Any other questions? Okay, if not thank you very much. We are back in session and Mr. Bynum had some comments to make.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Bynum: I understand this will be deferred and I have not made a site visit and I intend to. So briefly this access is one issue and the *ala loa* is another issue. We have a historic trail on Kaua'i called the *ala loa* and the State was aggressively pursuing that into the 80's and then they dropped the ball. The County was aggressively pursuing some of these issues. This folder here is a lateral access bill that is pending at this Council that has been pending since 2008. I am reading through it now because the idea that we can traverse the coastline laterally as a right, do we need to even debate it. You know it gets technical when you go down to the parcel level because and we can look at each parcel in the history people did not do this when they should have in the past or this has not happened. We have got to work out all these technical issues but does anybody disagree that it is not in our best interest to preserve this lateral access? You know that is historic and traditional on our island? That is critical. That is the most important thing in all of these so I am thrilled to see that there is some dialog

happening but that all of should have happened before it came here. Now in terms of ag subdivisions, I want to go on record as saying this Council, four (4) time in ten (10) years has refused to end the practice of doing gentlemen estates and pretending they are farms. In 2000 Mayor Baptise put it on the agenda. The Council deferred it and in 2002 the Planning Department put it on the agenda and it stayed pending for months. In 2008 Mayor Baptise put it back on the agenda. Stop this practice of creating gentlemen estates and pretending they are farms and the Council rejected it. In 2010, I put it on the agenda and the Council rejected it and so Councilmember Rapozo is correct. We do not enforce the farm dwelling agreements because they are a joke and we all know they are a joke. We need to end that practice but the Council has refused to do that on four (4) times so on access let us do it. Yes, I have a little attitude because we are talking about subdivisions. Everybody else did. Let us put it back on the agenda but I will have legislation to present again guaranteed.

Mr. Yukimura:

Thank you. Any other comments?

Mr. Hooser: I am a non Committee member but Councilmember Yukimura and I did go out and walk the easement and I want to thank the community members who came up and first raised this issue of the easement ending at a rocky cliff and it does. As result of our inspection, Shawn Smith is very gracious and has offered to propose some fixes, if you would, some ways to improve that. But if not for the community bringing it up, we would have an easement that ends at a wall of rock that is unacceptable. We should not have to pass an ordinance to require the Planning Department or anyone to go out and inspect something before it is approved or accepted but perhaps we may have to do that. That is the main thing. There are two things, I am thankful for the public for bringing it up. I am happy for the opportunity to go out and see it myself and appreciate the property/landowner being open to improving the situation. Look forward to further discussion on the issue as Councilmember Bynum so eloquently put it in working on legislation. The bigger picture stuff as well. Thank you.

Ms. Yukimura:

Thank you. Councilmember Rapozo.

Mr. Rapozo: I agree. You know when we get these things over and it is signed by the Administration, by the Managing Director, or by the Mayor, it comes with a reliance that someone looked at it, for me anyway. The rocky cliff is...you know I do not know. I am trying to be nice today.

Mr. Furfaro:

You can call it a *pali*.

Mr. Rapozo: Yes and I am trying to be nice. I think everyone understands what that rocky cliff is but I do not know. Is that an embarrassment? I mean I know it is unacceptable but I mean is it like... are we the County that incompetent that we would sign on something like this and say you

know it is okay? Telling the people here is your gift. I am terribly frustrated with this because if not for the Kallai's and the other community members that came forward that made contact with the Department of Transportation. That made contact with DLNR. We would assume that everything was okay. The representations that were made were that this was a great access to the beach. And it is not. It is not access at all. You know it is a trust issue for me. I am going to stay on the agenda item Councilmember Yukimura. When you read this agreement under nineteen (19) it says relocation the grantor which is the applicant, the grantor shall have the reserved right to relocate the easement area at the grantor's sole cost and expense provided... I do not really care what the provided said because it does not matter. They gave us a path to the rocks. That the Planning Department of the County approves the relocation. Well if they are not looking this gives them the right to move that easement at any time, the reserved right. I mean in other words they can do it without even letting us know. And all they do is send the paperwork. Planning will stamp it and then it comes and it is done. That is not how this system supposed to work. Again, I am not asking the Planning Department, I am not asking anybody to do any favors for us. I am asking them to do their job. Whether it is enforcement, whether it is permitting do their job. That is all I am asking. I am not asking for special favors of a gold plated 24 karat gold walkway to the beach with amenities, water fountains, and restrooms. Asking for access. They told us we had access. I saw it and I know the Chair seen it and you folks have seen it. It is not access. We got duped. It is what we got. Anyway, I am definitely supporting the deferral. I am not supporting this easement, I can tell you right now, whenever the thing comes to vote. It is not an access. I do not know what that does to the project. I do not know what that does to the legal, sue us, I guess that is what we are going be told. If you do not approve this they are going to sue us. Whatever. It is to the point where everybody has got to do their job. Every department has to do their job and I guess that is all I have to say. Thank you.

Ms. Yukimura: Thank you. So it has been that we have had a vigilant public to help us stay on track about these issues. The field visit to the site was very educational. I do not know if I would call it a *pali* or a cliff but it is a twelve (12) foot drop that one cannot really access and get to the beach through. There were portions of the trail that was very clear and very well marked but others that moved into bushes where it was very hard to see the terrain, the actual grade. I did really appreciate Shawn Smith's presence there and his willing to talk about the concerns that we have about the public access and we wanted to ask for a deferral to next year in order that the developer would be able to actually clear the whole route, the *mauka* to *makai* route. Also stake out some guidance in terms of more land beyond the ten (10) feet that would give us better access to the lateral path that goes across the properties seaward boundary. So what would like to have at our next meeting, which I am told by staff is December 11th, that is the next Committee meeting. It is more than two (2) weeks but that is the next Committee Meeting. I would like to have the landowner's representative whether it is

Mr. Smith or his wife Doran or their attorney come and give some commitments as to the clearing, the staking, the look at lateral access. I am thankful for this letter of October 2nd which I was not aware of. In it, DLNR commits to discuss with the developer/landowner the lateral access. I do not know what will come of it but that is a good thing to pursue and have happen. So for all of those reasons a longer deferral would seem in order but in order to get the clarity about what the landowner is willing to do during the deferral period, we will have them back at the next Committee meeting. So thank you to the community. Thank you to Shawn Smith and the landowner. I hope that we can work on this in a cordial manner and you know I was told that there were some pins put out but they were pulled out by some unknown people. I hope there can be some respect for these pins and we can go back and actually see some of the surveys. I also look forward to the broader discussion about ag subdivisions. I was very pleased to see Ben Farias there with his agricultural operation because he is a very competent farmer over a long period of time that I have known him. I am eager to hear his testimony as well. So with that I would like to ask for a motion to defer but first, Mr. Bynum.

Mr. Bynum: May I add something, Chair. If the State and the landowner are going meet and try to resolve, this that is great. I already mentioned that I had a sense that this would be deferred today so I have not returned every phone call that I have received regarding this issue but my basic...I guess I would like to say to Shawn if you negotiate, and this is just me, I would like us to have many access points so no one (1) point gets over used. I would like that access to be a parking area in you subdivision that has a short trek to the beach, not a mile and a half because we are trying to provide access for everyone including people with varying disabilities. Now at some places we can do that by having a built environment that allows people with disabilities. But there is a range, I am entering a range that I cannot do everything I wanted to do before. But we are all worried about we do not want to turn all these beaches into tourist places, right? Agree. One hundred percent (100%). That is why if there is seventy-five (75) choices to get to this shoreline in a period no one (1) is going to overburdened. If I were going to see a compromise I would feel good a clearly identified *ala loa* segment through that property. That make sense in terms of connecting with the other properties. A parking area in the subdivision with a beach access, that is not a mile and a half long. Those are thing I would like to see as a reasonable thing in this dialog. Thank you.

Ms. Yukimura: Thank you. I just want to say that the access is a little less than a mile not a mile and a half. Chair.

Mr. Furfaro: To all the members, I want to make sure we also understand the reposting of Kahuaaina as an agenda item is one (1) thing. Do not to attempt to mix the subdivisions with this item. That should be a separate item. I want to remind us all again we had a five (5) year sunset on the Additional

Dwelling Units (ADU) units first which we are now in year four (4). You know that was part of that other deferral but I will not sign off on a posting if you attempt to put the two (2) together in one posting. Thank you.

Ms. Yukimura: That is a very good caution and I will work to make sure that we do not do that.

Mr. Rapozo: I just have one (1) closing comment.

Ms. Yukimura: Yes. Go ahead.

Mr. Rapozo: I think we have to remember that the beaches are everyone's beaches. It is not reserved for anybody. It is not reserved for people with money. It is not and although I agree with we do not want to turn our beaches into tourist ridden beaches the bottom line is the beaches are there for everyone to enjoy. I mean it is. It is what it is and if you want to purchase a lot near a beach with public access issues that is what you get and I do not want to have this like we have to hold back on public access because we do not want all of the tourists to go there. I do not really care where the tourists go but our local people, and our residents. The tourists have a lot of things to do when they are here but our the local people, the fishermen, and the more specifically the *kupuna* that use to go there because they could and now cannot because we allowed a developer to say "no" and we are going to set up this path that will really prohibit or prevent certain classes of people, as Mr. Bynum talked about, from enjoying what they use to enjoy regularly. I think that is what we as a Council has got to focus on. And that can be done by requiring the adequate accesses which goes back to the Planning Department when they review these applications and these permits. Could my grandmother go down here like she use to? That is where I am so frustrated. And we keep complaining you know? We are giving everything away. We are losing everything. Well we have an opportunity to stop that and we have an opportunity to stop that with existing laws. Mr. Bynum talks about bringing in new laws that is fine. I am looking for that but until then we have existing laws, existing processes that protect the rights of our people. Sometimes we just overlook that and we have to stop. I just want to make that point. The beaches do not just belong to anybody, it belongs to everybody. Thank you.

Ms. Yukimura: Any other comments?

Mr. Bynum: Sorry to belabor this but I just cannot pass up this opportunity to say well said Mel. Well said.

Ms. Yukimura: Thank you, any other comments? I just want to say that public access is a double-edged sword, when it interferes with habitat and resources which can be destroyed by over population and over capacity. It is a

balancing act. I think I described what we had to give up at Crater Hill when we made it into a wildlife refuge. We gave up certain access so it is not a simple answer and you can destroy a resource by allowing too much access. So the nature and the type of access has to be really thought about and we are so lucky we get to do this here. Okay so with that Chair will entertain a motion to defer, which will be to the next Council meeting on Decemeber11th.

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Rapozo, and carried by a vote of 3:0:1 (Councilmember Kagawa was excused), C 2013-271 was deferred.

Bill No. 2461

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE (*Amendments to the Shoreline Setback Ordinance*) (*Deferred 10/16/2013*)

Mr. Rapozo: Madam Chair, it is 12:25 almost. Were you planning on taking a lunch break at 12:30 because I need to be somewhere at 12:30, I apologize.

Ms. Yukimura: I know the people on the 'Iniki bill are here to talk but I do think we have to take a lunch break. I would like to take care of this matter then take a lunch because I will be asking for a deferral on this once more actually to the first meeting in January. This was the Chair of the Planning Committee, Councilmember Nakamura, has been working on. As the Vice Chair, I have been working with her too. I just want to say we need at least one (1) more meeting but I feel that all stakeholders are being involved in this process and I am confident that we will have a good bill to work on in committee. So Chair would entertain unless there are questions or comments a motion to defer to the first meeting in of the new year in January.

Mr. Bynum: So moved.

Mr. Rapozo: There is no testimony?

Ms. Yukimura: Oh yes. Thank you for reminding me. Can we have a second though?

Mr. Rapozo: Then you cannot have discussion.

Ms. Yukimura: That is right. Sorry. So we will put a hold on the motion. Is there anybody who wishes to testify? If not will come back and there is a motion to defer.

Upon motion duly made by Councilmember Bynum, second by Councilmember Rapozo, and carried by a vote of 3:0:1 (Councilmember Kagawa was excused), Bill No. 2461 was deferred to the first Committee Meeting in January 2014.

There being no objections, the Committee recessed at 12:25 p.m.

There being no objections, the Committee was called back to order at 1:40 p.m., and proceeded as follows:

Bill No. 2502 A BILL FOR AN ORDINANCE TO REPEAL
ORDINANCE NO. 716, RELATING TO STANDARDS,
PERMITS AND FEES FOR WORK ON BUILDINGS,
STRUCTURES AND PROPERTY DAMAGED BY
HURRICANE 'INIKI (*Public Hearing held on
10/23/2013*)

Mr. Rapozo moved to approve Bill No. 2502, seconded by Mr. Bynum.

Mr. Rapozo: Madam Chair, may I introduce an amendment before we take public testimony so that at least that can be a topic of the discussion where we can get some input from the audience?

Ms. Yukimura: Yes.

Mr. Rapozo: Is that okay?

Ms. Yukimura: Yes.

Mr. Rapozo moved to amend Bill No. 2502 as circulated, as shown in the Floor Amendment which is attached here to as Attachment A, seconded by Mr. Bynum.

Mr. Rapozo: Thank you. All this does it sets a sunset date of twenty-four (24) months so the repeal would not occur for another twenty-four (24) months.

Ms. Yukimura: Okay. Thank you. So there has been a motion to amend Bill No. 2502 by extending its expiration date for another two (2) months.

Mr. Rapozo: Two (2) years.

Ms. Yukimura: Twenty-four (24) months or two (2) years. Sorry, thank you. There is a second and we will now go to public testimony first and then we will come back for a discussion about the amendment. The public is welcome to testify on the amendment as well. Do we have a list of speakers signed up?

Ms. Marugame: Yes, we have two (2) registered speakers. First will be Dirk Soma followed by Ken Kriner.

Ms. Yukimura: Mr. Soma, I know you have been waiting a long time. Thank you. Please state your name and then proceed with your testimony.

There being no objections, the rules were suspended.

DIRK SOMA: Yes. Good afternoon, Dirk Soma. And I do have written testimony. I do have copies.

Ms. Yukimura: Good. Thank you.

Mr. Soma: Thank you. *Aloha kakou*. As members of the Coco Palms Cultural Advisory Committee, we have spent the last several months in dialogue with representatives of Coco Palms Hui, LLC, the developers of the property, envisioning the rebirth of the iconic Coco Palms and what it would mean to not only the Native Hawaiian community and Kaua'i's community as a whole, but to the global community that is experienced all that the property and its associates shared through the values of *ho'okipa* and *aloha*. With all of the potential and the opportunities that we have been discussing, we are award of the major hurdle, the 'Iniki Ordinance. We strongly support of the extension of the ordinance to allow Coco Palms Hui, LLC to secure the necessary permits and begin construction to resurrect the Coco Palms. This action will enable the developers to enhance Kaua'i's hospitality industry by increasing accommodations inventory, bring much needed employment to our island, and enable us to honor the legacy of the lands on which the Coco Palms is built. From the days of Queen Deborah Kapule to a Princess to many of us still, Grace Guslander, we ask that you extend the 'Iniki Ordinance and allow this land to thrive and support all who live on, and visit Kaua'i. Below my signature is a list of the Coco Palms Advisory Committee, Danita Aiu, Kamika Smith, Kimo Keawe, Leina'ala Jardin and La'amea Almeida. I wanted to stress that it is not very often that we as the Native Hawaiian community have an opportunity to sit in at the ground floor of in discussions with developers. And we are very honored and appreciate the Coco Palms Hui, LLC has put forward to give us that opportunity. To look at how we might not just look at this as a development but as a way of honoring the land on which this development is built. *Mahalo*.

Ms. Yukimura: Thank you, Mr. Soma. Hold on there might be some questions. Thank you for your testimony. Are there any questions of Mr. Soma? Yes, Chair.

Mr. Furfaro: Good to see you again. You use to work at Coco Palms?

Mr. Soma: No, not with Coco Palms.

Mr. Furfaro: With AMFAC?

Mr. Soma: I actually spent many years with Sheraton Hotels. Spent some time with Ernie Nishizake at the Coconut Beach Hotel when Coco Palms was still flourishing as well.

Mr. Furfaro: I am familiar with you because I was the hotel manager at Sheraton Kaua'i with Ernie Nishizake but I just could not place your name. If you were with AMFAC Hotels or Sheraton. My apologies.

Mr. Soma: No problem and we also go back a little bit further to Princess Kaiulani Hotel in Waikiki.

Mr. Furfaro: Yes. You and I were hotel managers at Princess Kaiulani, that is right. Are you back here on Kaua'i?

Mr. Soma: Yes, I am.

Mr. Furfaro: Okay, very good. Thank you. I am sorry, you know a thirty-eight (38) year career in the hotel business and I am sixty-five (65) now and sometimes it goes a little hazy. I knew I could place you. Thank you.

Ms. Yukimura: You have been in many hotels.

Mr. Furfaro: I have been in a few.

Ms. Yukimura: I do not know how you track it all. Other questions? Any questions for Mr. Soma? I have one. In the interest of full disclosure can you tell us whether members of the Cultural Advisory Committee are getting any compensation for serving on the Committee?

Mr. Soma: We are getting no compensation.

Ms. Yukimura: Okay, alright. And how long have you been in existence?

Mr. Soma: We have got ten (10) together about three (3) months ago and we have been having discussions at least every two (2) weeks.

Ms. Yukimura: Thank you very much. Next speaker please.

Mr. Furfaro: Nice to see you.

Ms. Marugame: Ken Kriner.

KEN KRINER: Aloha to the Council again. I recognize some faces and I also see some new ones here today that I did not meet before.

Ms. Yukimura: Please state your name for the record.

Mr. Kriner: Ken Kriner. I live in 5745 Noni Street Kapa'a up in the homesteads. I have had a home here for about five (5) years and in that period of time I have learned and studied a lot about Coco Palms, what it is,

what it was, what it can be and I made a presentation last time and I will just cut it short this time but I feel that Coco Palms has some many positives if it comes back. It was a cultural center. It can be a cultural center again for the hawaiian and "Kauaian" heritage. It was a museum. It was *aloha*. It had the combination if all of those. It was a zoo. It had offerings for all types of people but also celebrating the hawaiian and kauaian life here in the islands which I think is a big, big plus and I think it can happen again. So bottom line is I support that it comes back. I hate driving down the road and seeing the dilapidated buildings. I think that let's bring the jewel back again and bring the people that know of it. I have talked to third generation families where their grandfathers and grandmothers got married there and they just go when is it coming back, when is it coming back? I want to come to Coco Palms like my grandfather and grandmother. Me as a resident I would like to see it come back also. That is all I have.

Ms. Yukimura:
next speaker please.

Thank you, Mr. Kriner. Any questions? If not

Ms. Marugame:

No other registered speakers.

Ms. Yukimura:
to speak at this time before I call up the developers? If not....Jennifer?

Okay, if not is there anyone else who wishes

JENNIFER LUCK: Good afternoon. For the record my name is Jennifer Lock and I am the Kaua'i island director of the Hawaiian Islands Land Trust. I simply wanted to give you an update about we are on our process. I thought it may be helpful and informative for you during this discussion. So if there are additional questions after I speak I am happy to answer them. In March of this year the land trust was awarded through the state legislator a grant and aid of two hundred and seventy thousand dollars (\$270,000) to perform a feasibility study and conduct a community input process to determine how best to use the Coco Palms site. The land trust was approached by a community group to apply for this funding and they felt it was incredibly important to allow the community to determine the future of this property. They felt that was essential for many reasons but first and foremost because of the thousand plus year history of this site, going far beyond the Grace Guslander years. And the community they felt being a incredible group of people could perhaps best determine how this property should be used. So we applied for funding and were granted funding from the State and are awaiting the release of those funds and hope to move forward with that process and conduct a feasibility study. Lead the community through an input process and allow them to determine the future of the property whatever that may entail. So that is where we are right now. The Advisory Committee of Coco Palms continue to meet. The Hawaiian Islands Land Trust Board of Directors are supportive of this endeavor, and supportive of this as a project. We protect and manage over eighteen thousand (18,000) acres statewide and have closed on projects of significant cost and complexity in the past as well. Are there any questions?

Ms. Yukimura:
Hooser.

Any questions of Jennifer? Councilmember

Mr. Hooser:

Yes. Thank you. And actually it is not a question but I wanted to in the interest of full disclosure I am not a member of the Committee so I am not voting on this issue for the committee but as a member of

the Council as it moves forward I will obviously participate and I just wanted for the record I mean the Councilmembers all know but I am a member of The Friends of Coco Palms which is a loose knit community group which initiated the funding from the State. When I was in the State Senate, I initiated additional grant and aid that ultimately made it to this point. Senator Kouchi is the one that did it during his term but you know as a volunteer member of the community I have participated in that so I just wanted to put that on the record so it is very clear. Thank you.

Ms. Yukimura: Thank you. Any other questions? Chair?

Mr. Furfaro: I am a non Committee member...

Ms. Yukimura: Yes, I know but that is fine. Go ahead.

Mr. Furfaro: Thank you. Jennifer, hello. Good afternoon.
The monies granted to your Friends of Coco Palms the due diligence money broken up into what phases of study?

Ms. Luck: Right and so initially the land trust would want to conduct some due diligence would which would include probably initially and appraisal to give us sense of what the fair market value was that we could purchase the property for, fees one Environmental Site Assessment (ESA) hazardous materials report which is usually part of that ESA, an assessment of the buildings and the integrity of the buildings to determine if any of them were at all salvageable and then the majority of that funding is essentially is for consultant fees and that would go towards paying appraisers, people that would conduct those environment site assessments and then the hiring of a consulting firm that would take the community through that public input process. At the end of that there would be a plan both a vision created for the property, a management plan and a fundraising plan in place that would then allow us to go and approach public funding agencies such as federal government, state government, local funding sources and private individuals.

Mr. Furfaro: And part of that due diligence I would assume as you talked about building integrity would be having a consultant to formalize what demolition cost would be?

Ms. Luck: Correct.

Mr. Furfaro: Okay. Do you have any other money, this two hundred and seventy thousand dollars (\$270,000) that could be earmarked for this project? Because I believe think that money alone is pretty shallow.

Ms. Luck: Right, I think that you know we are hoping that it will get us at least most of the way if not all the way however there are a number of individual donators that have a long relation with the land trust and expressed a significant interest in this project alone above and beyond any other project. And have essentially made pledges in support of the project so I think that there are a number of individual donators that would be willing to help support this process. If we were to get to the point we are able to complete what needed to be completed with the funding in place.

Mr. Furfaro: Okay, I just shared that with thirty-eight (38) years of hotel operations and I have built, remodeled, and demolished wings of hotels and your group would be aware that this number in my opinion for demolition is probably close to two million plus?

Ms. Luck: Right, the funding we secured is simply for the planning phase it would not include demolition costs on top of that. Yes, we are aware that demolition will be significant.

Mr. Furfaro: It is not like painting a house. You know when you paint a house you kind of know where you left off cause you can see the new paint. A demolition is the cost to take it down and then there is nothing there. It is a pretty significant number, I think.

Ms. Luck: Right.

Mr. Furfaro: Okay. Well thank you very much.

Ms. Yukimura: Thank you. Councilmember Hooser.

Mr. Hooser: Just a little further clarification, the funds that the State has appropriated go to the land trust, they do not go to the Friend of Coco palms and so the Friends of Coco Palms is a ad hoc volunteer community so my own personal perspective there are no funds, no money that comes my way nor toward Friend of Coco Palms at all.

Mr. Furfaro: Thank you for that clarification.

Ms. Yukimura: Other question? Jennifer, I have a couple. When do you think the money will be released?

Ms. Luck: We expect the money to be released sometime in January or February.

Ms. Yukimura: Then when it is released what kind of time table are you looking at in terms of creating a community vision?

Ms. Luck: Ideally we would like to have the process completed in a year. A year to eighteen (18) months I think is realistic.

Ms. Yukimura: In terms of the preliminary work you talked about, appraisal, environmental site assessment, assesment of buildings some of that information already be available from what the developer is having to do too.

Ms. Luck: Correct. There has been as all of you know numerous attempt to develop this property over the years. And so there has been a lot of this work has already been done. We are privy to some of that work already and are hoping through people who have been approached as investors in the past and that are working with our group that maybe we will be able to some of that information to help inform the process. To speed up our timeline and also to save some costs, because again there has been many attempts to develop this property and none of them have been successful so the good news about that is that there is a

lot of this due diligence work that has been done that we can probably go back and use during our process.

Ms. Yukimura: I think the Chair is right, that the two hundred seventy thousand (\$270,000) could go pretty fast and so wherever you already have some work done that would be useful to take advantage of that. I am glad you are already doing that. Okay, thank you very much.

Ms. Luck: Great, thank you.

Mr. Furfaro: Thank you, Jennifer.

Ms. Yukimura: Is there anyone else that would like to speak? If not I would like to call up Mr. Belles and I have asked them to make a presentation. I think at one meeting Councilmember Hooser said I would like to hear from the developers so I think it is Tyler Green and Chad Waters but why don't you introduce your clients.

MICHAEL BELLES: Good afternoon Madam Chair, members of the County Council. For the record my name is Michael Belles representing the Coco Palms Hui, LLC. To my immediate right is Tyler Green, one of the managing partners, and to his right is Chad Waters the second of the managing partners. I am here in a dual role, kind of a master of ceremonies to provide the introductions that I just made and to also to make a few comments about the project because I also have had involvement with Coco Palms since the mediation that took place after the hurricane when there was almost a ten (10) year plus mediation process and I was representing Etna, the insurance company, against the Chan family who owned the property and the property largely remained derelict for that entire time. There never was an effort to reopen the property as everyone knows and this is all a matter of public record so I am not stating anything that is confidential. The only thing that I cannot reveal is what the ultimate settlement was as part of the mediation and settlement process. But I can tell you that with scores of experts involved engineers, architects, scientist covering every discipline possible because there were issues about the sick building syndrome and other issues like that associated with the possible redevelopment of the project. The panel made up of very prominent engineers and architects in the State of Hawai'i concluded that the project could indeed be rebuilt. And we all frequently hear this comment, "well the landowner has been given twenty-one (21) years how come they have not done anything yet with the property?" The reality is twenty-one (21) of those years was eaten up with ten (10) plus years of just the mediation where absolutely nothing could be done with the property because the landowner sought to garter as much as they could from the insurance proceeds out of either a settlement or mediation decree. Until that was completed, no one was in a position to apply for any permits to rebuild what was there before or to build a new resort project on the property. And then we had the developers that came along and got the permits in 2007 for a timeshare project and it basically asked for the demolition and leveling of virtually all structures on the property including the Queen's Audience Hall and it was to be a timeshare project, fractional ownership, or multi-family condominium type of ownership, and the unit number exceeded the original number that was on the property when the hurricane hit which was three hundred and ninety-five (395).

Like many of you, I have to drive by this distress property two (2) times a day at least and it is very depressing. You cannot drive by it without noticing it. It is really the last significant, visible monument to the hurricane. I was pleased a month ago to be approached by the two (2) gentlemen on my right and ask if I would assist them in trying to see if we could get entitlements to rebuild the hotel that was there before. That was special to me because like many of you I have spent much time at the hotel whether it be having a luncheon with Auntie Lovey because she was a member of various Boards and Commissions when I was at the County Attorneys' office, when family and friends came to visit from freezing Minnesota they liked nothing better than to see the hula show there. I was always fearing most being called to go up there and dance with the young hula dancers but thankfully after all those years, I was able to avoid that but that phobia aside the Coco Palms as we all know, anybody who has been there enjoyed it. Whether it was for lunch, dinner, or had family and friends staying there spending any time there, it was unique, it was special, and we all know what the Guslander connection many innovated things were done at that hotel which have now become traditional throughout the entire state of Hawai'i. Very few people realize or acknowledge that the birth place of a lot of these traditions and customs are the Coco Palm's and Grace Guslander and her wisdom. It is something where it would hearten me nothing more to see this property rebuilt as a reasonably facsimile of what was there before as opposed to what I saw on the last application on which the permits were recently voided as we all know which was the timeshare project. In well over a decade there has not been an application that I am aware of for a new hotel on Kaua'i so this is really breaking with tradition and custom and this community and in many other places where it seem almost as though the hotel industry is regrettably is passé and the only hotels that seem to be successful are those that are dovetailing together with a timeshare component or another multi-family or fractional ownership component. And they refer to that frequently as the symbiotic relationship that allow both the hotel component to be successful as well as the timeshare or factual ownership interest is concerned. I know I am speaking to the choir when I am talking to the Chair or sitting across from him but I think all of us know this and I am not telling you something you do not already know. When I met both Chad and Tyler, I was very impressed that they were very passionate and committed to rebuilding a hotel working within the footprint of the buildings and structures that are there right now as opposed to tearing them all down. The request that we made to all of you, and I want to thank everyone of you for agreeing to meet with the three (3) of us over the past two (2) weeks especially with all the other I will say monumental issues that you have had to deal with. You were all very gracious and all very considerate in taking the time to not only listen to us but ask us very good questions that helped us come up with a better plan and what it really underscores is the amendment that was introduced by Councilmember Rapozo and that is the amendment to allow for a two (2) year extension of time on the 'Iniki Ordinance. Right now, I do not have all of the answers as a lawyer, in terms of what is the entitlement process for this property. What is grandfathered? What is not grandfathered? What is conforming is or nonconforming is under a Comprehensive Zoning Ordinance (CZO)? This is going to require a great deal of study not only on my part but I believe working closely together with the Planning Department, the County Attorneys' Office, and other affected agencies. We have been fortunate in having somewhat of having a reputation of Peter Vincent who use to, as some of you may remember he ran the Office of Emergency Permitting for many years and now he is a very highly respected architect on O'ahu and he has done projects nationally. He has agreed to help us with process and why I am especially happy to have him

part of this team is that he was also a part of the ETNA team when we were involved in the mediation so he knows this project very well not only from an architectural standpoint and an engineering standpoint but from a building code standpoint and from a Federal Emergency Management Agency (FEMA) compliance standpoint. These are all major issues that we need to resolve and the bottom line and where I will end and turn it over to the two (2) gentlemen to my right is that we simply need the time to look at this thing more. My clients have only had the property under contract since August so they have not been sitting on their hands, they have not been sitting idly by but in a back handed kind of way the introduction of this Ordinance, I believe, has prompted activity not only by my Prudential; the title holder of this property but also to people like my client who now realizes that this will not last forever. That if anyone truly wants to redevelop/rebuild the Coco Palms, that they will have to avail themselves of the benefits of the 'Iniki Ordinance. I do not want to go into those details now because believe me it is a time consuming exhaustive process and I still have more to learn and to know and to work closely with County, State and Federal officials to truly appreciate what the significance of that is. I do believe that with the introduction and hopefully I do hope that I am not being presumptuous but with the passage of an amendment like this, it will give everyone including Ms. Luck the opportunity to look at this property, see what can be salvaged, see what can be built, see what can be renovated and see how best to proceed. The last comment I will make is that in the very brief time my clients have been involved with this project and have been perusing it they have had at least one (1) discussion with Ms. Luck and the intention is to reach out to all members of the community because they know, having developed other properties in the State of Hawai'i and two (2) other properties here on Kaua'i that this is a community effort. We cannot do it by ourselves. We need the help and support of the County of Kaua'i both the legislative branch and the Administration and we need the support of the residents of Kaua'i. And only with the cooperation and support of everyone is anything going to happen with this and the last thought I want to leave you with is again my worst nightmare is continuing to drive by this project for foreseeable future. And with that last cryptic comment I will turn it now to Chad and to Tyler and then collectively we can respond to any questions you may have later.

Ms. Yukimura: Thank you. I just want to ask, the Chair has to leave at 2:30 so I am hoping to have some time for questions at least from him. Okay, please proceed.

CHAD WATERS: Chad Waters one of the two (2) managers of Coco Palms Hui and I will keep it brief so we can get to questions. Mike pretty much said it all. We have been under contract since August. We have assembled a great team from operators to construction, hazardous material studies, landscapers, have spent over five hundred thousand dollars (\$500,000) in the last couple of months preparing the entitlement and the plan for Coco Palms. As Mike said, we do need the time to take it through the entitlement process. Development is hard enough when everyone is working together the 'Iniki Ordinance, if revoke, would just make it just that much more difficult for us. So as I said we are moving down that path. We have had our property under contract for a few months. We need our building permits prior to closing and we are going to keep moving down that process and looking forward to working with you through that so as I said I will keep it brief and let Tyler introduce himself and we can go to questions.

TYLER GREEN: Tyler Green for the record. Our message I think is pretty simple, and one of the things that attracted us to this endeavor is all of the different stories we hear about Coco Palms and all of the different personal connections, and all of the different emotions that have surfaced through that. One of the things that is the repeated message that we keep hearing is that Coco Palms represented *aloha* and so as we embark on this endeavor we want to approach you and approach the community and make it a very inclusive situation where we can all work together and hopefully bring back even a minuscule scale of what Grace and what all of the employees and everyone else embodied there and that was that true sense of *aloha*. Where people can come together whether they are local families here or people from all over the world that come and feel warm and invited and feel that sense of *aloha* that flourishes here in Hawai'i.

Ms. Yukimura: Thank you. That was very brief. I can tell you are not lawyers. I am a lawyer myself so I can say that. So Chair, you wanted to start off on questions.

Mr. Furfaro: Thank you. First of all, I wanted to make sure that I want to disclose to you folks that I worked for AMFAC hotels from 1973 – 1981. I was a food and beverage manager at Hanalei Plantation also at the rebuilding of the Waiohai and then the Coco Palms so I do have some history with the property. Would it be too much to ask you folks have you narrowed down who may be your potential operator?

Mr. Green: Yes, we are in discussions with both the Hyatt and Starwood. It is important for us that as we choose an operator that its a soft brand if you will. Coco Palms the name and the legacy and especially the historical and cultural importance there is something we really want to embody as we go about this. And so it is important that any brand that we chose, or operator we chose, understands that and supports us in that aspect.

Mr. Furfaro: In this plan for the redevelopment, what is the exact inventory unit size? Are you rebuilding the inventory that was there with Coco Palms?

Mr. Green: We want to be sensitive to the market demand and it looks as though when we look at our unit mix it looks as if it will actually be decreasing from what the original rooms were from pre 'Iniki. From our records it indicated that three hundred ninety-three (393) rooms was what existed pre 'Iniki. We think we will probably arrive somewhere between three hundred (300) to three hundred twenty-five (325).

Mr. Furfaro: And would the identification and thank you for sharing the Hyatt and Starwood with us, but how do you see the marketing position and the marketing statement for Coco Palms? I mean if you had to sum up its brand type how would you summarize it?

Mr. Green: Probably the simplest would be a unique sense of place with a hawaiian feel.

Mr. Furfaro: I assume your operators are all in agreement with this kind of historic Hawaiian charm/Hawaiian hospitality that is known at

the Royal Hawaiian and that at one time was known at the Kona Village? They are all buying into that idea as an operator?

Mr. Green: We decided on these two (2) brands because of the flexibility there. Both of them have what you could call "outlier brands" if you will, that allow for more creative type properties. It was interesting, one of the head of developments for Northern America came and was on the property with us and he even partook in different brainstorming ideas that we had for the property in terms of hula lessons, and *ukulele* lessons, hawaiian lessons, he even added to that. We have a list of about thirty-five (35) or forty (40) types of ideas that we would like to place into the renovation of the property. They even said things that were on our list even before we said them. So that showed us that they were on board with having a more unique experience. One of the things we are hearing in the hotel industry is sense of place and customers and travelers now are starting to look for something different other than just the mega resort. I think that is why people come to Hawai'i. When they come to here they want to feel like they are in Hawai'i and do things that we do here in Hawai'i and so those are the things we defiantly want to add into our renovation program.

Mr. Waters: Let me just add one thing to that if I may? One of the things that was most important that we discussed with both operators is we wanted to bring back Coco Palms. We did not want to bring back a Hyatt that was also known as Hyatt Coco Palms. Not to take the Coco Palms and "Hyatt-ize it" for example, but to just have Coco Palms and have a professional operator such as Hyatt run the revitalized Coco Palms.

Mr. Furfaro: Along those lines Mrs. "G.", Mrs. Guslander was very successful in developing a property that no rooms had balconies. That were amenities in these guest rooms that made up for the closeness to the highway and so forth. Are you getting the same commentary from these operators? That they understand you have large guest rooms but rooms that do not have balconies.

Mr. Green: I think if I understand you question correctly they definitely aware of the physical constraints at the property. I do not know how to sum it up in words but I think when they come they feel it too and throughout all these stories and all of this connectedness that everyone feel to Coco Palms and maybe it was because it was Queen Deborah's old home site there is just this magnet that pulls people to the property. Even from the operation side of both of these brands, as business savvy as they are there is just this intangible feeling that they felt it was the lagoon and it was the lands and it was the coconut grove that spoke to all of these people and so you know they felt that the physical constraints on the property were not insurmountable.

Mr. Furfaro: I want to make sure you had a dialog that as we refer to that area as being *wahi pana*. It is a very special and very sacred place. Great history with Wailua Nui and the fact of the matter is Kauai's last queen's home was there. So in discussions with your operators, are you asking them for a five (5) year revenue projection?

Mr. Green: Yes. We have got one five (5) year revenue projection from one (1) group and waiting for a one (1) more pro forma to come in from another group.

Mr. Furfaro: So pro forma are on their way and would it too much for me to ask if you are in a position financially to carry debt service for the start up and maybe through a five (5) year period?

Mr. Waters: Yes. I guess from a financial feasibility side, yes, the pro forma definitely works with the debt service. We did receive a loan commitment last week. It is obviously subject to building permits but, yes, the performas that came in with the quote covers the debt service and the decent return on the capital we will be investing.

Mr. Furfaro: May I ask is Prudential involved in that financial resource for you or is it another financial organization?

Mr. Waters: No, it is not Prudential.

Mr. Furfaro: It is not Prudential. Okay. How do you see the mix of the hotel? Are you going to restore the Queen's Audience Hall? You are going to have some group business there? You are going cater to wholesalers? Has either Hyatt, the Westin, or Sheraton people, whoever that brand, have they expressed to you what might be their market position?

Mr. Waters: Let me just address the facilities program, essentially with the help of Agor Architects. We have redrawn every single building as built and then we are working with that existing footprint and square footage to determine exactly what we should put inside it. So the performas that we have received are indicative of the facilities program that they have recommended. Mike is holding up the plan right there which basically shows the buildings that are being renovated, the buildings that are being repaired, and the buildings that will be torn down and rebuilt. But essentially, we are using the exact same footprint and the square footage that was there pre 'Iniki.

Mr. Furfaro: I am assuming that with those two (2) operators, this is an either three (3) or four (4) diamond positioning for the hotel and what would that equate to in the way of full time equivalence for employees?

Mr. Waters: We do have an economic analysis and we are looking somewhere around four hundred (400) full time jobs just on the operational side. That is not including the construction jobs.

Mr. Furfaro: So about 1.25 employees?

Mr. Waters: 1.25, 1.3 was the number. I think that is the industry standard.

Mr. Furfaro: How will you be telling the Coco Palms story? You have a wonderful group of people, and some of them I use to work for. My apologies to Mr. Soma that I did not recognize him over some past assignments but how are we telling the Coco Palms story?

Mr. Waters: That is a really great question and one of the things that we have tied in with the commitments that we have from our operators

is that we get to select the general manager. Hyatt is not going to bring in a general manager from the mainland to run Coco Palms. So I think that is really our number one (1) priority is that once we get down the line here is to select a general manager that knows that story inside and out. So I guess after your political career is over if you want to come back we would love to have you.

Mr. Furfaro: I am sixty-five (65). But you do want to cultivate local talent that knows the value that Coco Palms has contributed since 1954 to our community?

Mr. Waters: This whole morning Tyler was reading his Coco Palms books and writing notes. I do not know if he has his copy here. We both have copies and are giving them out as presents and raided Costco recently, I do not think they have any of the Coco Palms books left.

Mr. Furfaro: Well I had one, you may not recognize me, I had curly hair then.

Mr. Green: We will find your picture in that book.

Mr. Furfaro: JoAnn, thank you very much. I have to depart gentlemen and I am not a voting member of this Committee. Thank you very much for the quick overview on the planned operations for Coco Palms. Thank you Chair.

Ms. Yukimura: Thank you, Chair. In this particular case it is great to have a formal hotel manager as a Councilmember. I just want to announce that in about three (3) minutes, we are going to have to do a tape change and so when BC rises his hand we will all stay in place for five (5) minutes so he can change the tape but up till then we will have questions from Councilmember Bynum.

Mr. Bynum: Thank you all for being here and for meeting last week. I appreciate it. I may ask some of the same questions for the public record and first thing I want to say is that you cannot have George Costa either okay? We want to keep him here at the County. But those are the kind of individuals, should this succeed you want running that place and that is a very wise decision. I will play devil's advocate for a minute because we have been through this for twenty (20) years and Mike to comment on some of the things you said I do not believe Orland or Anaheim would have sat for ten (10) years while the Coco Palms sat there. The municipalities would be sophisticated enough to bring some resolution so I think there is work for us to do in terms as a county about controlling but that is kind of a side issue right? But you are correct, in your analysis, ten (10) years nothing and then we had a group that came here and said to us hey the Coco Palms as it was is no longer economically viable. That hotel model is gone. We have to go to a timeshare combination symbiotic kind of thing to make this work and they worked really hard to sell the community on their different plan and they got there permits right? They could go. They did not proceed. Then the Planning Commission gave them a several more years and many of us said no do not give them several more years. Okay so here is my cynical question, you guys now own the property, right?

Mr. Waters: We are under contract. That is correct.

Mr. Bynum: You are under contract to purchase the property so let us just assume you own it. You can apply for permits today to rebuild Coco Palms under our current laws and ordinances correct? But you want to do it under 'Iniki because....

BC: We have to do this.

Mr. Bynum: Okay. I will wait.

There being no objections, the Committee recessed at 2:25 p.m.

The Committee reconvened at 2:30 p.m., and proceeded as follows:
(Mr. Furfaro was noted excused)

Ms. Yukimura: Councilmember Bynum was articulating a question. You remember?

Mr. Bynum: Yes.

Mr. Belles: Madame Chair before we continue any further, I would like to correct one thing from the record. This may be my shortest engagement ever because I will be correcting both a Councilmember, as well as my clients, but when the question was asked, "if we could get our building permits today, is that right," and then the answer was yes. In truth, we would not be able to get our building permits today. It would be a process involved and we would have to at the very least get a shoreline setback determination, a bunch of other environmental issues would have to be dealt with, and a project I will say of this complexity it is not simply a matter of putting lipstick on a pig or repainting this thing. There are structural issues involved, and there are other development code issues involved which relates to safety, health, and welfare that would have to be resolved. As I said earlier, I am not even clear what those are right now and I would have to sit down with both the Planning Department and the County Attorneys Office to make sure that we are all in sync in terms of whatever entitlement path we ultimately decide upon or agree upon but it is not something that where we could proceed immediately. It would be months before we could get permits to build that property.

Mr. Bynum: Yes Mike, thank you and of course you are correct in everything you said. I was just trying to take a big overview fly of the big picture issues okay so I am cutting in so let me reframe that. You could start the process under existing law to permit the vision you have outlined for us? But your preference is to go under the 'Iniki Ordinance because it provides advantages, correct?

Mr. Belles: Yes and it is hard for me to be brief but yes for us to proceed under the 'Iniki Ordinance is very important for a lot of different reasons. It does exempt compliance with certain ordinances. It also allows us, to basically rebuild what was a non-conforming grandfathered hotel. When you think about it, it was built in the late 50's, early 60's at that time we did not even have a Comprehensive Zoning Ordinance. That did not come into existence until 1972. It

was done on what was then called the Interim Zoning Ordinance, the IZO and there was a lot less in terms of code compliance then what we currently experience. There is the definite advantage to proceeding under the 'Iniki Ordinance cause it would grandfather in many of those former non-conformance uses and would not require that we come up to code in term of the CZO and other newly enacted ordinances from the time the hotel was first built.

Mr. Bynum: Right. I appreciate that also. I think it is important to look at least at the big issues. What are the pros and cons of either proceeding under existing laws with existing sensibilities, or proceeding under, I think there are pros and cons for the County, for the community and you know a potential developer. I just want do a high level look at those now and then I have some very specific questions.

Mr. Belles: Can I make one (1) more comment relative to the view from thirty thousand (30,000) feet? If we were to proceed with code compliance to all current codes, laws, rules and regulations, in my opinion, we would not be able to rebuild and renovate the existing Coco Palms hotel with setbacks and may other, no, it is not a matter of penciling out. You would not be able to design and layout that property as it is laid out today. We would not be able to build within the four (4) walls, so to speak, of what is there today.

Mr. Bynum: Right, I mean you need that because under current existing laws we would not allow those things.

Mr. Belles: The codes would not permit that.

Mr. Bynum: One of the things under current law is that the County would expect a contribution to affordable housing and that would not be a part of this if we do it under the Ordinance correct?

Mr. Belles: Arguably not. We do not know that for sure.

Mr. Bynum: And so part of that would be you would not have to bring the property into flood zone compliance. That is part of the benefit, correct.

Mr. Belles: There are certain Federal Emergency Management Agency (FEMA) requirements that must be complied with. I only know this having worked with again Peter Vincent again on the what is now known as the Koa Kea hotel where we did ultimately apply for permits and there was FEMA compliance requirements in that particular case but because the lower floor of all the concrete structures fronting Kūhiō Highway it is elevated and they are uninhabitable spaces we do not believe there will be a requirement that the current structures be elevated.

Mr. Bynum: In sake of time, I will not go into all of these technical details, but they are very significant. I think part of my due diligence is to do a pros and cons benefit, which I am willing to do. But the public needs to know that there are trade-offs and there is good news and bad news. For instance, these are some of the questions I asked when we met, the previous developer said we are going to restore Coco Palms lobby to its former glory. We are going to get rid of this

ugly building on the street that was not a part of the original Coco Palms. I feel very strongly that building totally takes away from the historic character and so with this Ordinance, you could rebuild that building and the previous one was to abandon that building, right? So I am correct about this, right?

Mr. Belles: Yes. And my last, last comment is that because of the complexity of this issue and the issue of the Iniki Ordinance the relationship of the two (2) a lot of the questions do not simply beg a yes or no answer. A lot of them are a yes, buts and there are a lot of qualifications to it and require a thorough analysis so I do not want to give the impression that it is a simple yes or a simple no which underscores the need for the time and the two (2) years to make sure that we do it right and have the time to work together with County, State, and Federal agencies to make sure we do it in compliance with all Federal, State, and County laws.

Mr. Bynum: So I have a couple specific and then I want to get to the heart of the matter for me anyway that will impact my decision here. The Seashell is part of this redevelopment plan?

Mr. Green: Yes.

Mr. Bynum: I have issues with that because there is no parking. The previous developer had a pretty elaborate plan to deal with the issues about keeping the Seashell as a integral part of Coco Palms and it included putting a bridge over the highway, it included valet parking so there would always be valet parking for guest. I do not know how that works because that bridge is not permitted. That bridge was not a part of the original Coco Palms and will not be permitted. So how do you deal with the Seashell? Do you intend that to be part of it or is that something you are going to abandon or what?

Mr. Green: Yes, we would like to keep the Seashell as part of the renovation plan and we realize that there is some studies that we need to do in terms of how to safely get people across the street there and we understand the limitations on parking as well. We had loosely discussed allocating some parking for public beach parking and figuring access with that so you know we are just need to I guess work with the right agencies and work through those studies and figure out the best way to solve those issues.

Mr. Bynum: And again without coming to any conclusions it is like here is the way the Coco Palms was before the thing and then here was all of these plans and a lot of discussions that we may be able to use about how we are going to deal with traffic and the fact the left turn lane into Houselots is going to be eliminated by the State has a big impact on our community and whoever owns the Coco Palms can help alleviate that potentially. Those kinds of thing are really important. The bigger, higher level thing is let us say we give time, then the land trust can do their due diligence and see if there is a mechanism to do what many in the community would like to do, turn this into not a commercial endeavor at all but a historically preserved place that served other purposes and that is kind of what they are exploring. The difference is that if you can proceed with your due diligence at some point we are going to reach the point where you have a legal vested right to continue. So it is not like oh we are going to go eighteen (18) months and see what Jennifer comes up with and then see what you come up with and decide. If you

proceed with the, under the 'Iniki Ordinance at some point under Hawai'i law the County will not have a choice to say whether you proceed or not, right?

Mr. Belles: Again, I wish it was a simple answer but in the law as I understand it in the case that I argued and lost on is that the Hawai'i Supreme Court rule is that basically that in order for a landowner or developer to get vested rights you must have your last discretionary permit and then have invested a substantial sum of money and reliance thereon.

Mr. Bynum: I spend a lot of time on that issue related to other County issues and it is not determined in Hawai'i law where that line is. Is that correct? Is that a safe to say?

Mr. Belles: It can be arguable, depending on the circumstances, yes.

Mr. Bynum: I want the public to understand that this is a choice about whether we are going to allow a developer to proceed with the rebuilding of Coco Palms under circumstances that are not the same and may not address all of the issues that came up in our previous iterations of this. And all of that has to be worked out in a unique way if we proceed under this Ordinance with a lot of due diligence from both you guys and our Planning Department and Public Works. I mean if we are going down this road but what is important for the public to know is that if we do not say okay, you know what 'Iniki was twenty-three (23) years ago and why are we still having this Ordinance on the books? Let us just move forward with the current sensibilities. You guys will not develop Coco Palms is what you guys are saying today. Under your current law it does not pencil out or it is too much of an undertaking. I just wanted to have this dialog on the public record because this is a significant decision and so I am thinking, I am just thinking out loud now, I may before the end of the day ask for not a two (2) year deferral but a two (2) week deferral so I can process some of all these things that I am doing right here on the public and have dialogs with our attorneys. I think to either delay this for two (2) years or today I do not know what I would vote if the vote was called right now. I need a little more time and I want to be really clear with the community about the decision we are making because if we say hey, you guys are good to go at some point it is going to happen right? And the County will no longer have a decision in that. Of course we always want to avoid getting into arguments about interpretations of laws. So this is very interesting. It is very complex. For me to make a solid decision for to wait two (2) years or just say let us just keep the Ordinance in tact I am going to need a couple of more weeks I think.

Ms. Yukimura: Okay we want to go on and have all the questions asked first. Councilmember Hooser.

Mr. Hooser: I am not a Committee member today, so I will not be voting at the Committee level. I did have some questions though and as I mentioned when we met briefly the vision to restore Coco Palms to its prior grandeur is quite compelling, but it is also has been a long, long time and I guess just for clarity Councilmember Bynum asked some of this but so you are not the owners of the property? Is that correct?

Mr. Green: Correct.

Mr. Waters: Correct.

Mr. Hooser: Is it fair to characterize your position as you have a contingent offer on the property, contingent on the 'Iniki Ordinance, contingent on getting financing, contingent on your permits and building the hotel?

Mr. Waters: It is just simply contingent on permits.

Mr. Hooser: Just permits? Okay. Which would include the 'Iniki Ordinance?

Mr. Waters: No, I mean simply permits. Whatever manner that we get there, you know if we can rebuild under, I mean we are going to leave the entitlement to Mike, Planning, and the Council.

Mr. Hooser: Upon securing permits then you take out the land, the owner now?

Mr. Waters: That is correct.

Mr. Hooser: So you pay them whatever "X" millions of dollars for the land. So once you get the permits you will be the owner.

Mr. Waters: Shortly thereafter. Yes, that is the plan. It is to secure permits, close shortly thereafter and start construction simultaneously.

Mr. Hooser: And you had mentioned that you had a loan commitment, is that a construction loan?

Mr. Waters: It is a construction loan that is correct.

Mr. Hooser: And that is contingent on the permits. Subject to permits as you have mentioned?

Mr. Waters: Yes.

Mr. Hooser: I would imagine it is subject to other things too as these things normally are; appraisals and construction costs.

Mr. Waters: That is correct. Yes, we have spent collectively thousands of hours as a team studying in everything from the operations side to the construction side so everything at this point, the feasibility works. If we had our permits in place today we are confident that we could secure financing and start construction. The longer that it goes the more the uncertainty becomes.

Mr. Hooser: And so to actually effectuate the purchase there is no financing contingency? Do you have to go out and get the money?

Mr. Waters: We have no financial contingency in our contract.

Mr. Hooser: Okay. And I think that sometimes the anger or the dissatisfaction is misdirected at these things. The owner is really the entity that has not come through all this time. People like yourself, the developers working have made some attempts but the owner has not fulfilled the responsibility. The owner has not maintained the property. The owner has not done a whole lot of things. And so I appreciate you stepping forward however as been mentioned we have had a lot of other people promise a lot of other things and the whole image of Lucy holding the football and telling Charlie Brown I promise I will not move the football again is there. Besides being nice, experienced, creditable developers what assurances does the County have? If this Council approves what you are asking in effect the County of Kaua'i is handing you a bundle of benefits with money attached. It is financial benefit. So how can you assure that this would actually happen at the end of the day and not just fall at the waist side like has happened so many other times?

Mr. Waters: Well all I can say, and Tyler may have another comment to this; we have proceeded to spend over five hundred thousand dollars (\$500,000) without any assurance from the County so in good faith we have moved down the line, and we have improved the property. As you said, we are mowing the grove, we are trimming the coconut trees, we are doing hazardous material studies, we are putting real money and real time into this project. All I can say is that I hope our actions speak louder than words. There may have been previous people that had a lot talk but ultimately they did not do anything. So that is it. We have spent our money without any assurances and we are going to keep continuing down that path and if you guys want to see this rebuilt, Coco Palms Resort built, then we would love to work with you on it.

Mr. Green: Yes, I would like to just echo that. I hope we have not done anything that has shown that we have waived at all from our commitment. When Chad says, "actions speak louder than words," we are fully committed to this project and we know that time will only tell that. We hope that we have done the best that we can to show everyone here today in this room and also within the community we are serious and that not only we are serious but we want to approach this the right way. We understand that there have been some attempts in the past and may or may not have been approached the right way and maybe have come in with the wrong personality but whatever that may be but once again we want to approach this the right way and that is why we are fortunate to have Mr. Belles with us because we hope with you all here and with Mr. Belles, we can receive the proper guidance to go along this path the correct way and make it an inclusive situation. So that we can work together with Hawai'i Island Land Trust and we can have these types of conversations. So we can figure out what everybody wants and figure out if there is a way for everyone to be pleased at the end of this journey.

Mr. Hooser: Thank you. And as the as builds, were those as builds done for a prior developer that you just took over?

Mr. Waters: Mr. Agor can speak to that, but he and his staff have been working round the clock. Ron does not get much sleep lately. No, we commission that a number of months ago and they have probably have thousands of hours in the last couple of months.

Mr. Hooser: And another question then maybe the Planning Director at some point, would you open to a prohibition on timeshare conversion?

Mr. Waters: We do not have any plans on a timeshare. The timeshare product is really different from then the hotel room. In the timeshare industry people are basically wanting larger type units and our plan was to bring back the hotel which it is a different configuration than a timeshare product.

Mr. Hooser: So in terms of putting some sort of legal prohibition against timeshare conversion in the future what happens historically, hotels that have higher employment, higher food and beverage, luaus get converted to timeshares and there is a lot less of that. I mean as you are developers, you will likely be having other people do things and you may sell it or whatnot. So in terms of a legal prohibition on the property, on the deed or whatever would you be open to that?

Mr. Waters: Yes, as I said, we do not have any plans to timeshare. We would have to look into what other conditions are attached to that and what that means and the entire package and what happens. But like I said we have zero plans to timeshare. If this property does not work as a hotel then it is not going to work right now. We do not have plans to lose money for a couple years and then convert to timeshare. It needs to have economic feasibility as a hotel as it sits.

Mr. Hooser: Okay, thank you. Just at some point the Planning Director....

Ms. Yukimura: Yes. Councilmember Rapozo. Questions?

Mr. Rapozo: Thank you for being here today. So I heard the no timeshare because that is important for me anyway. I want to make sure that it is a hotel. I think that part of the beauty of Coco Palms of course back then I do not even think they had timeshares but the hotel configuration works best for the property. The plan is to restore it to the original configuration, keeping the buildings. I understand some of the buildings are still structurally sound so we could really not have to demolish everything to the ground. A lot of that could be rebuilt to its original design, I guess. Is that still the plan?

Mr. Waters: That is correct.

Mr. Rapozo: I know Mike showed the map but I know the public could not see that, but a lot of the public is concerned. They want Coco Palms back. They want that property back. They want that name back. I want the zoo back with the monkey. That is what I want. We want Larry Rivera back. We want Coco Palms. We just do not want another hotel. I think that is what the community...that is what I hear in the community. We just do not want another...Coco Palms is not just another hotel. It is an icon. It is a tradition for this island and it is unfortunate that it has just deteriorated. So the idea is to replace that same iconic status if you will. Is that still the desire?

Mr. Waters: The Chair is going to come out as the General Manager (GM) and you can come on as the Zoo Director.

Mr. Rapozo: Oh, he is gone. It is a deal. And then obviously I think question was asked the financial backing is in place subject to permits.

Mr. Waters: That is correct.

Mr. Rapozo: I think a lot of the problems in the past, I think a lot of people did come out and I testified against expanding or extending the permits at planning with the former developer or owner because there was absolutely nothing behind but just begging for more time because he did not have the money. So in this case it is a little different. The financial backing is there, you have a great consultant sitting next to you, so okay. Thank you.

Mr. Hooser: Just a follow-up.

Ms. Yukimura: A follow-up. Go right ahead, Councilmember Hooser.

Mr. Hooser: It is always sensitive when you talk about money. Borrowing, asking for your bank account, how do you provide evidence of the substance to close the land when you have the permits.

Mr. Waters: We do have a loan commitment letter that you could see and also just our track record. I know in the project executive summary that we gave you we did initiate and close fourteen million dollars (\$14,000,000) worth of real estate in Kapa'a last year and spent quite a bit of money remodeling that. If you look at the other projects that we have hopefully once again our actions speak to our capabilities in that respect.

Mr. Hooser: In terms of taking out the land that is a big chunk of change, I would think, and so you mentioned a loan commitment to acquire the property?

Mr. Waters: No, that is for construction.

Mr. Hooser: And so demonstrate the resources to actually close the land.

Mr. Waters: Yes, I guess I could say that we spend five hundred thousand dollars (\$500,000) to date. Unless we were fairly confident that we could close on the land and provide for the construction, it would not be a very smart move to spend five hundred thousand dollars (\$500,000) without having a good idea that was going to happen. So in the end there really there is no guarantees but I hope our track record speaks for itself and the other projects we have closed right here in Kapa'a the work that we have done.

Mr. Hooser: Thank you.

Ms. Yukimura: Thank you. I have a few questions. Thank you very much for being here today and for the briefing you have given us and for your courage and guts to take on this possibility. Part of the thinking in the visitor industry context of today is that hotels are passé and they are not very really economically feasible with at least a timeshare component so what kind of examples of hotels of this approximate size have shown success, can you point to as successful?

Mr. Waters: There is a lot of examples but I think the biggest thing is that if you look at the hospitality industry in terms of hotel properties that have traded this year it is by far a record. The hospitality market and the economics are very, very good. At the same time we have two (2) very successful operators in Starwood and Hyatt that have looked at our plan and have said that yes, this is economically feasible without the timeshare component. We also have an appraisal on the property. Everything seems to line up. This is the perfect market for the Coco Palms to be reborn. We have a motivated seller that was motivated by the repeal of the 'Iniki Ordinance. We have a great financing market. We have a good economy and we have a very good hospitality market with Kaua'i really on the upswing with all the additional direct flights that are coming we have seen that the occupancy rates are climbing on Kaua'i. The average daily rate is climbing on Kaua'i so it seems to me we seem to have the perfect storm in a good way for the rebuilding of Coco Palms. We have put a good team together and we think the timing is right to make it happen.

Mr. Green: Just to echo that, I think the last attempt in 2007-2008 during the global capital meltdown was a different picture and at that time it would not have worked as a hotel and it did not work as a timeshare but we think now the hospitality industry has turned in general and now is the perfect time to do what we are embarking on.

Ms. Yukimura: Well how long do you think this honeymoon is going to last?

Mr. Green: It is a crystal ball question but we just have to... I do not know, to be honest with you. It could be a four (4), five (5) year cycle, it could be a six (6) or seven (7) year cycle. I think that is something that we will figure out during our studies.

Mr. Waters: It is more the issue of getting out of the ground. Once you are out of the ground and you have construction going, and the hotel operating you are typically okay. If we try to develop in a down market, that is much more difficult. The financing is not there and typically development, if they are going to happen they will happen right there.

Ms. Yukimura: I agree with you that Starwood and Hyatt, you know, thinking that it is economically feasible is good evidence but can you point to some hotels that are doing well as hotels?

Mr. Waters: Well, you can start naming hotels on Kaua'i...

Ms. Yukimura: Without timeshare.

Mr. Waters: You can go all the way down the list.

Ms. Yukimura: Where is there a hotel...

Mr. Waters: The same thing on O'ahu, Waikīkī and I do not have the exact stats here. Maybe Tyler know of what percentage of hotels on Kaua'i actually have a timeshare component to them but I do not know that.

Mr. Green: We have to pull that up but what I think is interesting from a global picture is if you look at all the institutional buyers that have come into this market in the last few years and you look at what is called cap rates or capitalization rates and how these bigger, larger assets are traded, if you track the cap rates in Hawai'i they are much, much lower and every time you have a lower cap rate you have a higher sales price. Which means there is higher demand for institutional groups to come here into Hawai'i because the hospitality market is performing so strongly. To give you an example a recent trade or some recent trades that we could probably get some data on might show a four and a half (4.5) or five and a half (5.5) percent cap rate. That is Waikīkī and different market but in general the Hawai'i hospitality market if you compare it with all the other markets is performing much, much better.

Ms. Yukimura: So is Coco Palms going to be in the category of a boutique hotel?

Mr. Green: I think the definition of a boutique hotel would lend itself to a smaller room count but I think we could say this is more of a lifestyle hotel and more of a unique experience. Those are kind of industry terms that Hyatt has been kind of kicking around. It is definitely not going to pattern itself after the larger mega resorts. It is not going to be directly competing with the Grand Hyatt or St. Regis so to speak. This would be a completely different experience and that is why this is Coco Palms. Coco Palms is different. It is unique.

Ms. Yukimura: One of you said that it comes to the County Council. The issue will not come to the County Council, right? The zoning is already there.

Mr. Belles: The issue is before the Council is the 'Iniki Ordinance.

Ms. Yukimura: So once we act on that, that is the end of the Council's decision making?

Mr. Belles: Barring any need for rezoning which we are not contemplating right now. We are not anticipating...

Ms. Yukimura: I guess one of my concerns is how you are going to incorporate the community vision, whatever that may be because I think we heard Jennifer Luck say that the process for defining the community vision has not yet started. We know that certainly part of the community vision is to restore Coco Palms but there are other aspects that have been raised about the potential of that property and indeed that sketch that you showed, or the depiction that you

showed of the property shows buildings but substantial open space and cultural history that started way before Coco Palms hotel did so do you have any thoughts on how you would incorporate the community vision?

Mr. Waters: That was the exactly the reason for the Coco Palms Advisory Committee and you heard from Dirk Soma earlier. These were seven (7) people that we had not met so they are not hand-picked by us to fulfill our vision. They are not compensated by us as you were asked and that is the really reason for that board is to reach out to a good cross-section of the community and their directive from us was to present a plan to incorporate the cultural components of what the community would like to see at the property. Let us dispel the notion that they cannot co-exist because originally that is from what I have read and what I have heard is that is what made Coco Palms special was the mix of the hotel property and the cultural components and that general aspect. The same time I had a call this afternoon with the director of the Hawaiian Island Land Trust. We did connect and we are going to have a phone call with him so we are open to discussing the project and whatever components with whomever would like to have that conversation with us.

Ms. Yukimura: If the board was not hand-picked by you how were they picked?

Mr. Waters: We put it out to a couple different people and then they went out and just started just kind of like word of mouth at that point and I think that Dirk Soma could, I have no idea how he was picked and how the rest of the group was picked so that may be a better question for him. We showed up at a meeting and it was like here are the seven (7) people and we had a conversation. It seemed like it was a great, great selection.

Ms. Yukimura: Are the Friends of Coco Palms included in this group?

Mr. Waters: They are welcomed to be included in the group. We have not had any with the exception of I think Tyler had a conversation with Ms. Luck and reached out to her. I can let Tyler speak to that.

Mr. Green: Yes. I invited Jennifer to join that group and she did not think it would be a good idea.

Ms. Yukimura: I am sorry she had to leave because I wanted her to be part of the conversation too. Would there be an opening or a possibility of some financial support to support a community process that is not "your" community process?

Mr. Waters: Yes, as long as the objective is that it is as part of a Coco Palms resort not instead of a Coco Palms resort because the last thing we want to do is put our money and time into something, I mean our objective is to restore Coco Palms so to answer your question is definitely yes for some kind of community process to assist us in that vision. That would be great.

Ms. Yukimura: So there could be a trial period where people come together to talk and see what kind of ideas and compatibility or

incompatibility there are with the different visions that may be in existence but not really pulled together. I think that was the process that the Friends of Coco Palms was envisioning. Bringing various stakeholders if you will or people who have an interest in and have some vision for the property and having enough discussion to see whether a common vision arises in the discussion.

Mr. Waters: Yes, we are definitely open to, we have had meetings with as I said we have a phone call after this with the Director of The Hawaiian Island Land Trust to figure out what those concentric circles may be and what the overlap is. We have also met with local residents that would like to have an assisted living component to the property, that like to have I mean whatever the ideas are we are open to look at those ideas to see what will work with the project and we have not shut those ideas out.

Ms. Yukimura: That is very great. I appreciate that openness. Is it possible for us to give two (2) weeks to a month to have those discussions before we take actions on this Bill to see what the possibilities are?

Mr. Waters: Yes, we are asking for as much time as we can and as I said we are already heading down this process as it is so I guess we just ask that you do what you see fit and work with us in this process.

Ms. Yukimura: Because I am concerned that once and 'Iniki extension is given it is pretty much... you go for your vision and I would like a chance for a community vision to be at least considered, discussed, tried in terms of some dialog, and conversation. Okay, let me see if there is any other questions. It is hard to even articulate this but what if the property does not work as a hotel?

Mr. Waters: Well at this point with the performance that we have from the operators and the appraisals that we have and the other studies we have done, in reality we will not realize that for five (5) years down the line that it does not work as a hotel. As Tyler said we do not have that crystal ball but we are relying upon our experts and I think the two (2) operators that we mentioned, they have enough expertise so we are going to trust our numbers, our lenders, and equity partners also trust their numbers as well.

Ms. Yukimura: Two (2) years to permits is what you are thinking?

Mr. Waters: We will let Mike talk to the time frame. I mean we are hoping that it happens as quickly as possible. There is absolutely zero reason for us to delay on this. If we can be building in three (3) months we would love to be building in three (3) months. If it takes two (2) years... we are going to proceed as quickly and as judiciously as we can to that permit process.

Ms. Yukimura: I am just saying that your general time table is two (2) years to permits and you hope to be in operation in five (5) years?

Mr. Waters: It is about a two (2) year build out.

Ms. Yukimura: Two (2) year build out so about five (5) years to opening?

Mr. Waters: We certainly hope it is a lot quicker than that. If it is one (1) year to permits then it is three (3) years to opening.

Ms. Yukimura: Yes, that would be nice. Assuming it is the community vision.

Mr. Waters: Yes.

Ms. Yukimura: I think that is all the questions I have. I think Gary wanted to...

Mr. Hooser: One more follow-up.

Ms. Yukimura: Sure. Go ahead.

Mr. Hooser: I mentioned before that people have not been able to come through, and have not performed. I am struggling with what assurances the County could have that in return for something like this that you would perform. The thought came to mind that there could be some kind of performance bond where the developers or the owners put up two hundred thousand dollars (\$200,000), two hundred fifty thousand dollars (\$250,000) whatever the number is, and if you do not perform that money goes to a community effort, or it goes to a County. If you do perform, it goes back to you like a bond would. I do not know if you have any thoughts on that or if you want to think about that but that would, it may carry some weight in terms of some assurances that this is not just speculation, not just doing deals. And we talked about this at the meeting there is nothing prohibiting you from reselling the property right away if you wanted to or I mean so if the community wanted some assurances that this is really going to happen and if it did not happen we do not tie up the property and let it sit there for another two (2) or three (3) years and nothing happens and the community think it is stalled and we are back to where we were before with egg on all of our face and the community still not having anything. I do not know if you would like to comment on that, performance bond type of

Mr. Waters: Yes, one as mentioned we have already spent five hundred thousand dollars (\$500,000) on the process and instead of just giving us a two (2) year kind of open timeframe, we would be happy to report back on quarterly or monthly basis. So it is not two (2) years and we did not do anything and at the end of two (2) years nothing, would happen but over that timeframe there can be milestones so we can put in there. We are going to be continually spending, in the next three (3) months, We will probably spend another five hundred thousand dollars (\$500,000) on it to go through this process. It is not cheap. It is not easy. If we set those milestones that we reach and you can see that we are moving forward hopefully that would be enough assurance that we are serious about this.

Ms. Rapozo: I have a follow-up.

Ms. Yukimura: Sure, Councilmember Rapozo.

Mr. Rapozo: And maybe this is for Mike. Is a performance bond appropriate in a situation like this?

Mr. Belles: Appropriate is in the mind of the beholder. Performance bonds are commonly used in construction to guarantee performance or provide more of an incentive so that if someone does not fail to perform. To say that it is illegal, unconscionable or against any kind of social standing nothing really comes immediately to mind that it would be prohibitive or inappropriate. To me it is something worth considering like anything else and beyond that I really do not have a legal opinion about the propriety of a bond. Government imposes bonds for different purposes and different reasons all the time and not always related to development and construction. But usually to guarantee performance and I do not know that a bond in the amount mentioned would be an incentive or a guarantee for the completion of a project that is going to be in the tens of millions of dollars in terms of value.

Ms. Yukimura: Thank you. I have one (1) more question. The ordinance allows you not to follow a lot of the current requirements and so I think we want some assurance that whatever you will do will be safe and environmentally sound so if you are not bound by the flood, I guess there are some flood regulations today that would apply but some that would not. What can you say to the issue of safety and environmental soundness in spite of the ordinance if we allow it to continue?

Mr. Belles: Even with the ordinance and my experience on Koa Kea project, we were required to comply with health, safety, welfare codes, and rules and regulations that were adopted subsequent to the original 'Iniki ordinance.

Ms. Yukimura: Okay, and then the other thing the ordinance would do is to not allow things like our present housing law to be applied which means that you could not give any kind of affordable housing but another hotel that was coming in new would have to and so I do not need any answers or commitments but I guess those are some of the concerns we would have in terminating the 'Iniki ordinance, determining to or not to.

Mr. Belles: And we did discuss this previously with you and I will just let my clients repeat what they told you before in terms of looking at possibly other housing initiatives maybe not to the full thirty percent (30%) as currently required by the housing ordinance but if there is interpretation in the applicability of the housing ordinance then I will let them repeat what they said previously.

Ms. Yukimura: I know that at our meeting you were open to talking about that issue and even suggested some specific possibilities and looking at that would be really useful since that is a major challenge for our community in a place where the world is the market for our real estate. And which allows successful hotels we still have people living here who have a hard time affording a decent place to live so if some of that could be addressed it would be very excellent. Any other concerns? If not, did you want to still have Planning Director?

Mr. Belles: Thank you very much.

Ms. Yukimura: Thank you. So if Mr. Dahilig would come forward. Mr. Rivera, I see your had I know it is view, not please come forward Mike.

It would be out of process to let you speak again but I will if it is three (3) minutes. Okay, after Mr. Dahilig.

MICHAEL A. DAHILIG, Director of Planning: Good afternoon Councilmembers. I am Mike Dahilig for the record.

Mr. Hooser: Just a couple of questions. The 'Iniki Ordinance in general allows the development of the property according to what was in place at that time.

Mr. Dahilig: Yes.

Mr. Hooser: Chapter 343 is State law governing environmental impact statements, is that effective or impacted or Special Management Area (SMA) laws?

Mr. Dahilig: Maybe if I can give some background just if we are specifically about this project as part of the issue spotting exercise that we have been going through with the developer on applicability issues with the 'Iniki Ordinance Chapter 343 is one of the issues that we have issues spotted and we are currently right now seeking guidance from the County Attorneys' office as to what factually would trigger applicability. As you are probably all aware there is a historically designated site on the property and that would certainly being on the property has its own set of regulations and entitlements namely is specifically earmarked for 343 disclosure in that particular case. So how and what they intend to do directly and around the ponds have a direct determination on whether a 343 review and disclosure needs to happen first and that is why I am only talking in general and broader term because we do not have a formal development application before the department just yet, but that is an issue just to confirm.

Mr. Hooser: So some of the buildings are in a SMA?

Mr. Dahilig: Yes, there is an SMA. In fact the previous development where the entitlements were pulled off did also fold in an SMA approval back in the mid 2000's.

Mr. Hooser: I think what I am hearing you say is that there is a Chapter 343 trigger?

Mr. Dahilig: A potential, yes.

Mr. Hooser: So there might be? There is or there is not?

Mr. Dahilig: There might be depending on what they have factually decided to do with the property. If they, let us say they decide to restore the ponds or decide to build right up to the ponds that is different than staying away from the ponds and then just redeveloping the buildings alone. So there is a number of factual iterations that we have to evaluate and if they are going to touch the ponds or be effecting the ponds in somehow then the Chapter 343 question does need to be addressed.

Mr. Hooser: I guess a better question for me would be the 'Iniki Ordinance does not impact Chapter 343?

Mr. Dahilig: No.

Mr. Hooser: Okay. Thank you.

Ms. Yukimura: Questions of the Planning Director?

Mr. Rapozo: I just have one (1).

Ms. Yukimura: Yes, go ahead.

Mr. Rapozo: Thank you, Mike. This would probably be the only project left that would benefit from this ordinance, right?

Mr. Dahilig: Actually, there are a couple structures, in fact one down in Hanapēpē, the old theater that could be impacted by whatever the Council decides to do with this ordinance. So in as much the Coco Palms is the primary headliner project that can be affected by either the passage or non passage of this legislation before you there are still remnant 'Iniki structures out there that could seek some kind of grandfathering as a result of what the Council decides to do.

Mr. Rapozo: So the Hanapēpē, and I am not familiar with that project but is that an active project that is moving forward?

Mr. Dahilig: It is something that the developer has come in to us for some degree of due diligence. Nothing formal has come in for an application but certainly given some of the factual representations made through the due diligence process, there is the opportunity for the potential applicant to say I would like to seek applicability of the 'Iniki Ordinance to grandfather myself from certain things.

Mr. Rapozo: And is that plan to restore the theater to its original?

Mr. Dahilig: In terms of what I have gathered there is a desire to keep the façade and some of the uses but in terms of an actual theater use it did not appear to me as if the actual theater itself was...

Mr. Rapozo: Yes, but as far as the appearance?

Mr. Dahilig: The façade, yes.

Mr. Rapozo: Okay. And I would assume that if in fact the repeal does happen that developer would probably shelve that project as well?

Mr. Dahilig: In this particular circumstance he was actually aware that the 'Iniki Ordinance could apply. So that was something that we raised to him. Whether he trying to come in, given the clandestine timeliness of what is going on with Coco Palms they are pushing to right now to get

grandfathered as well and just trying to confirm that they were not. So it was just an issue we raised with them.

Mr. Rapozo: Okay, thank you.

Ms. Yukimura: Thank you. So an SMA permit will be needed?

Mr. Dahilig: It says within the SMA and when you look at what the 'Iniki Ordinance does allow and not allow grandfathering from the only way that an SMA could be waive in a grandfathering style would have to be as a result of some gubernatorial proclamation that happened immediately after the hurricane, so it is the same analysis as the 343 question that Councilmember Hooser raised.

Ms. Yukimura: I.e., the two (2) laws apply not withstanding?

Mr. Dahilig: Not withstanding.

Ms. Yukimura: Alright. Okay, any other questions?
Councilmember Bynum.

Mr. Bynum: Very briefly, Mike. This ordinance went through the Planning Commission.

Mr. Dahilig: Yes, it did.

Mr. Bynum: They recommended repeal.

Mr. Dahilig: Yes, we did.

Mr. Bynum: Did they have input and discussion with these new developers?

Mr. Dahilig: There was testimony that did come in during the public hearing process of the Commission's approval process but in terms of an actual dialogue with the developers it was not as in depth with what the Council is having right now.

Mr. Bynum: Thank you.

Ms. Yukimura: Any other questions? If not, thank you, Mike.
Mr. Rivera, did you want to say something. Our rules are still suspended

LARRY RIVERA: Aloha.

Ms. Yukimura: Three (3) minutes.

Mr. Rivera: Aloha again for letting me come up here and say a few, I do not have anything printed because at my age you know I usually bring something that I can put down but thank you Councilman Rapozo for giving job security. And you know Coco Palms is not just another hotel. The lives of many

people depend on the Coco Palms to come back. They stop, everyday people are stopping, Larry, we want a job, we want to work there. I say well I am coming to a hearing. Come and help me. We cannot. Either we do not have a car or we are working or things like that that stop them. So anyway, just picture this, 7:30 the drum beats and I go to the microphone. There are three hundred (300) or four hundred (400) people. The drum beats, the nightly ceremony recreating, recapturing more than one hundred (100) years ago, when these grounds were the royal grounds on this island of Kaua'i. Always with royalty there was one who blew a conch shell. He would face to the rising and to the setting sun, to the mountains and to the sea. In the history of the Hawaiian people which was handed down from one generation to the next in the *mele*, in the chant, in the *'oli*, in the hula, until the time of written record, until the time of missionaries. And he was compared to a herald, calling to attention to listen to the drums talk. You will hear an authentic ancient beat on the big drum calling all within the range of its sound to come in. The food is prepared, the table is laden. Hawaiian never measured their time by day but by night. By *mahina*, the moon and so the gayeties, the festivity, the feasting, the music was after the lighting of torches. You will see one run through this largest and oldest coconut grove in all of the islands lighting the torches just as they did so many years ago. Imagine that happening. Imagine the Deborah Kapule pageant, the Queen coming out from the grove with the big bon fire and the kahuna, then the *kahili* barers and the King coming with outrigger down the canoe to meet Deborah as they separate we sing *Aloha 'oe*. This all can be back again. I would like to see it in my lifetime and these people are new, they are not starting. They are new and they want to build it yesterday.

Ms. Marugame: Three (3) minutes.

Ms. Yukimura: Thank you.

Mr. Rivera: So please help them. That is all I have to say. Mahalo.

Ms. Yukimura: Thank you, Uncle Larry. Alright so we will come back to order here and yes, Councilmember Rapozo?

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Rapozo: I guess I should explain the amendment a little better. I did not have the opportunity and it really boils down to do we want the Coco Palms back? I mean I think that is what boils down to. It is no secret that the purpose for my amendment was to allow the gentlemen that were here earlier the opportunity to finish their vision and they have invested quite a bit of money already. We grandfather things from time to time but you know it is almost not a grandfathering. Coco Palms, they are trying to build Coco Palms and I think the zoning, everything is in place. I do not want that to turn into time share. I want it to be restored. I think a majority of people want to be restored to what it was. I think what Mr. Rivera just did there brought back some really vivid memories. My mom worked at Coco Palms. I spent a lot of my younger days in Coco Palms and it was always my dream to one day work at Coco Palms and maybe that will be possible, I do not know. A lot of people do not know after high school I went Kaua'i Community College (KCC) to take hotel operations, that was what my dream was and Coco

Palms was just such a big part of our life growing up. I do not like what has occurred in the past. I think a lot of people made misrepresentations but for some reasons I think a lot of it has to do with the half a million dollars that you have already invested. I do not think too many people would just come here to get their fifteen (15) minutes of fame on a Kaua'i County Council meeting and spend half a million dollars to do so. I think there is a definite motivation behind. I think there is a desire and I think you folks will make history if this thing gets done. I mean you will restore Coco Palms. That is a feat that has been tried for, attempted for many, many years and no one has been successful. But I think as Larry described the grounds as sacredness of the grounds the recreation of what occurred on this island in the oldest coconut grove in the state I just feel that we should move on this. I think we should move forward and assist you folks as best we can. Now the reality is and you know I know the organizations that want to convert this to a park or to some other use, the reality is there is very little money available out there today. We heard this morning from the same program, the nurses that the funding, state funding, federal funding is diminishing every day. So realistically to expect the government to be able to take over this land with some non-profit help I think that is going to be a much bigger challenge. I am hoping that we can, it is not a deferral of the bill, this is my amendment is establishes a sunset date of two (2) years. We are not deferring the bill. We are putting a sunset date. I would probably entertain some kind of agreement with the developers that they do quarterly reports, every three (3) months to come before the Council to explain the progress to the body so we can be kept abreast and the public can be kept abreast. But I think to expect the developers to enter into an agreement that is going to help a process or fund a process that could potentially end their project is, that is not fair, as well. I think if this Council believes Coco Palms needs to be restored or should be restored than that is the direction that this Council is saying let's move forward and let's assist as best we can to get that opened and in addition to the historical and cultural significance and the connection to old Hawai'i, the economic benefit of the jobs. That is what the amendment is for. I am hoping we can get this past. I will definitely support a deferral of this for two (2) weeks if you need too but I am hoping that we can at least agree that we can help get Coco Palms rebuild, restored and bring that magic back to Kaua'i. Thank you.

Ms. Yukimura:
something?

Thank you. Mr. Bynum did you want to say

Mr. Bynum: Yes, as I said earlier I am going to ask the Committee for one (1) deferral in order to do more due diligence. I am not prepared to make this decision today. This is a tough one. This is really compelling, right? It is. If you are really doing due diligence as a Councilmember cause it has been twenty-two (22) years. The community has a vision for what that might be that they really never got to pursue. We wanted to start a year earlier but as I recall, the former Governor would not release the funds and it lapsed. We wanted to start a community process to see what our alternatives were because everything takes time. It is so compelling emotionally to want to bring back Coco Palms. As Mr. Belles said, ten (10) years this sat and did nothing. That brings bigger issues about why we can allow that to happen. If we say yes to this, these folks can perceive down a path where our options would be limited. Maybe that is what we will decide but personally I am not prepared to make that decision today. I want to talk to our Planning Department, our attorneys, and maybe with the developer again an tease out all of these things. One that is important to me is housing. The

current state of the law is if you develop, you need to pay some housing exactions. We can let that go in this instance but should we? There are lots of questions that I am not prepared to answer today. I see three (3) Committee members and I am not going to vote to finalize this today so I think that is going to defer it anyway one way or another.

Ms. Yukimura: Thank you. I do not see Mr. Hooser here to speak so I will say a few words. I want to thank Mr. Waters, Mr. Green, and Mr. Belles for being here today and being willing to talk to us about your vision for the Coco Palms hotel and property. I think your passion and your intention resonate with a large part of our community. I think it is quite compelling to want to see you to be able to move ahead. I do think there were many issues that were raised that still need some time and talk, maybe conversation, so I will supporting a deferral to the next committee meeting which due to Thanksgiving is actually in a month rather than two (2) weeks. So it is December 11th and I think that is good given that Thanksgiving and everything else, good time for some of the conversations to be held and also for some amendments possibly to be or some kinds agreements to be developed. And I think you know this is an amazing community and both from the passion of developer and the passion of community for restoring Coco Palms as well as for the possibilities and for open space and cultural restoration and addressing some of the needs of the community such as affordable housing. It is a challenge but perhaps we can find some way clear to find some win, win in all of this. And so Councilmember Rapozo would you like to say anything more?

Mr. Rapozo: I actually have a question. I just realize this now and it is probably for the clerk, but we do not have... I am looking our calendar,

Ms. Yukimura: We do not have a Committee Meeting.

Mr. Rapozo: We are going from one (1) Council Meeting

Ms. Yukimura: Yes.

Mr. Rapozo: ...to another Council Meeting

Ms. Yukimura: I know.

Mr. Rapozo: There is no Committee Meeting in between. I am not sure if that is supposed to be that way.

Ms. Yukimura: I am told that it is because of Thanksgiving but any staff to clarify that? I believe that is our official calendar.

Mr. Rapozo: I know it is the official calendar but I am just concerned that and I did not catch this till now and one of the reasons is that I am not going to be here on the eleventh, I will be in the mainland.

Ms. Yukimura: Yes, I know.

Mr. Rapozo: So.

Ms. Yukimura: And that is the last Committee Meeting also of the year right? Will you be back on the eighteenth?

Mr. Rapozo: Yes, I will be back on the eighteenth but it is the Council Meeting.

Ms. Yukimura: I mean one way to handle it is we could move it out to the Council or defer it once more to the first meeting in January.

Mr. Rapozo: I guess I would like to take care of this sooner than later.

Ms. Yukimura: Right.

Mr. Rapozo: But there is no sooner.

Ms. Yukimura: Right.

Mr. Rapozo: And I guess I would ask indulgence of the Chair. Maybe we can ask the clerk or the Chair if we could hold a Special Committee Meeting. That is not the first deferral we have had today for Committee.

Ms. Yukimura: No.

Mr. Rapozo: So I am thinking that if we could do, I mean we have had more meetings in the last couple of months than I have ever had in my whole career, ten (10) years on this Council.

Ms. Yukimura: I know what you mean.

Mr. Rapozo: So I do not see the problem of creating a Special Committee Meeting to deal with these issues because a month is a long time, but again it is just a thought. I do not know how you do that. I have just never had back to back Council Meetings. I have never seen that before. That makes no sense actually because we are going to deal with the business of the Council. Normally we go to a Committee Meeting so we get more issue for the Council but this is going to go from one Council to the next. And I have never seen that before.

Ms. Yukimura: I do not remember that happening in my career either on this Council.

Mr. Rapozo: I was thinking it was maybe a typo.

Ms. Yukimura: What I am going to do is maybe a five (5) minute recess to just...

Mr. Rapozo: Well you have to take a caption break anyway.

Ms. Yukimura: Let us take a caption break then. Thank you. So ten (10) minute recess. We will be back at ten to four.

There being no objections, the Committee recessed at 3:40 p.m.

There being no objections, the Committee was called back to order at 3:54 p.m., and proceeded as follows:

Ms. Yukimura: The Chair would like to recommend that we defer to the next Committee Meeting which is on December 11th. There are issues that we should work really on and a deadline should be good for that. I think either we will pass on the eleventh, either pass it out of Committee so the it will be on the Council floor December 18th when Councilmember Rapozo will be back or if we decide we need more time we will defer it again to the first meeting in January which I am told will likely be January 8th. I think we do recognize that time is of the essence but we also recognize that by passing a bill with a two (2) year sunset we are probably letting go of several other options that this community has wanted to see. We also are letting go of some of the concerns that Councilmembers have about the particular with respect to the restoration of Coco Palms and so we are balancing that and we are wanting to get this matter resolved as quickly as possible. So December 11th deadline will make us work hard in the next four (4) weeks and maybe we will be able to pass it out of Committee then otherwise we have the other option to defer to January but that will be seen on December 11th. Yes, go ahead.

Mr. Rapozo: Can I have the Planning Director for one more question?

Ms. Yukimura: The Planning Director for one more question? Chair suspends the rules.

Mr. Rapozo: I apologize.

There being no objections, the rules were suspended.

Mr. Dahilig: Again, good afternoon.

Ms. Yukimura: You should give your name again please.

Mr. Dahilig: Mike Dahilig for the record.

Mr. Rapozo: Mike, I think Mr. Hooser asked you earlier or someone asked you earlier about testimony during the planning process at the Planning Commission.

Mr. Dahilig: Yes.

Mr. Rapozo: And I had meant to ask you this before you went back to sit down and I did not. Is the department okay with a twenty-four (24) month sunset for the repeal?

Mr. Dahilig: Yes. The Department is well into discussions with the Administration. Twenty-four (24) months is, we believe is a reasonable time for extension especially in light of the fact that there is finite date. So we are not working on an ongoing basis. There is end date to this and so that is an

accountability factor giving the developers notice that they need to get their ducks in line within that time frame.

Mr. Rapozo:

Okay, thank you.

Ms. Yukimura:
are back in session.

Thank you. Any other questions? If not we

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Rapozo: What about procedure questions? Now I have a motion that is on the floor. I do not believe we have to vote to pass that motion so...

Ms. Yukimura: So a motion to defer take precedence and it will throw everything into the next Committee Meeting.

Mr. Rapozo: Including the amendment. The amendment will be alive on the eleventh or does not?

Ms. Yukimura: Well you have to remake it but we would have the option to vote on it then.

Mr. Rapozo:

Okay. Alright.

Ms. Yukimura:
motion to defer.

Okay so with that Chair will entertain a

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Rapozo, and carried by a vote of 3:0:1 (Councilmember Kagawa was excused), Bill No. 2502 was deferred.

There being no further business, the meeting was adjourned 3:58 p.m.

Respectfully submitted,



Lori L. Marugame
Council Services Assistant I

APPROVED at the Committee Meeting held on December 11, 2013



TIM BYNUM *(effective 11-19-213)*
CHAIR, PLANNING COMMITTEE